TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 170.

WILLIAM BAYNE, HORATIO R. RIDDLE, AND ALLEN A. CHAPMAN, TRUSTEES OF BAYNE & CO. ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED OCTOBER 16, 1874.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, (being the third day of the same month,) in the year of our Lord one thousand eight hundred and seventy-three—present, the honorable Hugh L. Bond, circuit judge; William F. Giles, judge Maryland district; Archibald Sterling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—among other were the following proceedings, to wit:

THE UNITED STATES
vs.
WILLIAM BAYNE AND OTHERS.

Be it remembered that heretofore, to wit, on the third day of January, in the year of our Lord 1868, the said United States of America, by Andrew S. Ridgely, esquire, district attorney of the said United States for the district of Maryland, filed in the circuit court here the following bill of complaint, to wit:

To the hon. the circuit court of the United States for the district of Maryland:

2 The United States of America, by A. S. Ridgely, its attorney in & for the district of Maryland, bring this their bill against William Bayne, Horatio R. Riddle, Allen B. Chapman, trustees as hereinafter stated; Lawrence P. Payne, William T. Hough, & John Honeywell, trading as Bayne & Co.; Alvin N. Bastable & Gilbert N. Bastable, trading as A. N. Bastable; Alexander Kirkland, Robert R. Kirkland & Daniel Chase, trading together with the said Allen A. Chapman as Kirkland, Chase & Co.; Samuel Turbott, W. M. Meyenberg, John J. Chancellor, O. Brehme, all citizens of the State of Maryland; William Bell and Martha his wife, William R. Jones and Richard L. Brown, trading as William B. Jones & Co., and certain persons trading as Conway Haughten & Co., citizens of the State of Virginia; Oscar King, a citizen of the State of New York, & Thomas A. Waters, a citizen of the State of Virginia.

And your orators complain and say that heretofore, to wit, in and long previous to the month of April, 1866, the said Lawrence P. Bayne, the said John Honeywell, & the said Hough, all citizens of the State of Maryland, were carrying on, in the city of Baltimore, the business of bankers & brokers, trading under the name & style of Bayne & Co.; that in the said month of April the said United States had a deposit in the First National Bank of Washington City, District of Co-
3 lumbia, an authorized depository of public monies, large sums of money, of which more than $200,000, belonging to the Pay Department of its Army, was deposited to the credit of E. E. Paulding, colonel & paymaster in its said Army, of all of which the said Lawrence P. Bayne & the said Honeywell & the said Hough & the said Merchants' National Bank had notice; that, on or about the 21st day of April, 1866, the said Lawrence P. Bayne, the said Honeywell, & the said Hough, under the name & style of Bayne & Co., procured & caused a large portion, to wit, $200,000 *dollars*, of the said money belonging to the said United States, & deposited to the credit of the said Paulding, its paymaster, to be withdrawn & redeposited in said National Merchants'

Bank of Washington, by means & contrivance of certain checks drawn by the said Paulding, without any consideration or lawful cause therefor, & at the instance of & for the benefit of Lawrence P. Bayne & Co., upon the said First National Bank, & in favor of the said Merchants' National Bank, & the proceeds whereof went immediately & directly to the use & benefit of the said defendants composing the firm of Bayne & Co.; that in this transaction the said Merchants' National Bank acted as the agent & abettor of said last-named defendants, who received and used the proceeds of said checks with the full knowledge that the same were the property of & belonged to the said United States, & with the further knowledge that they were obtained in violation of the
4 laws & in fraud of the said United States. By reason whereof the said Lawrence P. Bayne, the said Honeywell, & the said Hough, trading under the name and style of Bayne & Co., became & were indebted to the United States in the full and true sum of two hundred thousand dollars, the whole whereof, together with interest from the day of its receipt, is still due & unpaid.

And the said attorney of the said United States, in their name and behalf, further shows that, on the 5th day of May, 1866, the said Lawrence P. Bayne, the said Honeywell, and the said Hough, became and were insolvent, & not having sufficient to pay their debts, by a deed duly executed & filed on the same day in the office of the clerk of the superior court for Baltimore City, made a voluntary assignment of all the property, real & personal, belonging to them individually or as partners in the firm of Bayne & Co. to William Bayne, who is prayed to be made one of the defendants herein, & to Oscar King & Charles W. Boteler, as trustees, upon trust for the benefit of their creditors, with certain preferences as therein set forth, as more fully appears by said deed & the schedule thereunto annexed, a copy whereof is hereunto annexed marked "Complainants' Exhibit A," & is prayed to be taken as a part hereof.

And the said attorney of the United States, in their name and
5 behalf, further shows that the said trustees accepted the trust created in their favor by the aforesaid deed of assignment, & entered upon the discharge of their duties as such trustees, & took & received possession of a large portion of the estate of the said insolvents, but that shortly after so entering on their duties as trustees the said Oscar King & the said Charles W. Boteler abandoned their trust and ceased to perform any of the duties thereof; & having failed to file in the office of the *of the* superior court for Baltimore City an approved bond with sureties for the faithful discharge of their duties in the time & in the manner prescribed by the laws of the State of Maryland, such proceedings were thereupon had that according to the laws of said State it was decreed that the said King & the said Boteler be removed from their office as trustees & and that the said Allen B. Chapman & the said Horatio R. Riddle, prayed to be made defendants herein, be appointed & substituted as trustees in the place & stead of the said King & the said Boteler, but with like powers; &, being so appointed, the said Chapman & the said Riddle accepted their appointment as such trustees, & jointly with the said William Bayne entered upon & still continue to discharge their duties as substituted trustees.

And the said attorney of the said United States, in their name
6 & behalf, charges that the said William Bayne, the said Allen B. Chapman, & the said Horatio R. Riddle are in the possession of valuable assets belonging to the said insolvents, consisting of cash, notes of hand, & other kinds & descriptions of property, & derived not only

from the assets of the insolvent firm of Bayne & Co., but from the individual estate of the partners of said firm, the exact value & amount whereof is unknown to the said attorney, but which he believes to be considerable & to exceed the sum of eighty thousand dollars; that by reason of the premises the said United States is entitled in the distribution of all of said assets to a priority over all the creditors of the insolvents, & particularly over the creditors preferred by the said deed of assignment, a copy whereof is hereunto annexed; by virtue whereof the said United States are entitled to demand a discovery from the said last-named trustees of all the assets of every kind & description in their hands as such trustees, together with an account of their management of such trust estate, wherein they should be charged, not only with such assets as they may have received, but with such as they could or ought to have received, and are further entitled to a decree requiring them to pay over to the United States any & all sums of money collected or in hand & such as they may from time to time collect & receive, as soon as they so collect & receive the same.

7 And the said attorney of the United States, in their name & behalf, charges that all the defendants hereinbefore named set up or claim some interest adverse to the claim of the United States, or deny the validity & correctness of the same, & assert that the preference & disposition of the assets contained in said deed of assignment, a copy whereof is hereunto annexed, & marked "Exh. A," are good & sufficient in law & equity to defeat the claim of the said United States as hereinbefore set out, but your orators show that they are entitled to recover their said claim as against the said defendants & to have the relief hereinafter prayed; & your orators further say that the Merchants' National Bank of Washington City has become insolvent & that James C. Kennedy has been lawfully appointed its receiver, & that the said Merchants' National Bank & the said Kennedy are non-residents of the State of Maryland & are without the jurisdiction of this court, and also William B. Jones, Oscar King, Thomas A. Waters, & said persons trading as Conway, Haughten & Co., are non-residents of Maryland, & are without the jurisdiction of this court.

To the end, therefore, that the said William Bayne, the said Allen B. Chapman, & the said Horatio R. Riddle, trustees as aforesaid, may be required to file an account under oath of all the assets of every

8 kind belonging to the said insolvent firm of Bayne & Co., or to the individual members thereof, which they, the said trustees, have or should have collected & received, & of their management & distribution of the same, & that they be ordered & adjudged to pay to the said United States, until their claim as aforesaid is satisfied, all sums of money already received by them, & that they devote all the assets in their hands to the extinguishment of the said claim, & that they be adjudged responsible to the said United States for all losses suffered or to be suffered by their failure to perform their duties as such trustees, & that such other & further relief may be given to your orators in the premises as justice & equity demand; and that all the defendants, naming them in full, may answer this bill & show cause, if any they or any of them have, why the said United States should not have the relief prayed & such other & general relief as the nature of the case may require—

May it please your honors to grant unto your orators the United States writ of subpœna, directed to the said William Bayne, Horatio R. Riddle, Allen B. Chapman, trustees; Lawrence P. Bayne, William T. Hough, & John Honeywell, trading as Bayne & Co. Alvin N. Bastable

Bank of Washington, by means & contrivance of certain checks drawn by the said Paulding, without any consideration or lawful cause therefor, & at the instance of & for the benefit of Lawrence P. Bayne & Co., upon the said First National Bank, & in favor of the said Merchants' National Bank, & the proceeds whereof went immediately & directly to the use & benefit of the said defendants composing the firm of Bayne & Co.; that in this transaction the said Merchants' National Bank acted as the agent & abettor of said last-named defendants, who received and used the proceeds of said checks with the full knowledge that the same were the property of & belonged to the said United States, & with the further knowledge that they were obtained in violation of the
4 laws & in fraud of the said United States. By reason whereof the said Lawrence P. Bayne, the said Honeywell, & the said Hough, trading under the name and style of Bayne & Co., became & were indebted to the United States in the full and true sum of two hundred thousand dollars, the whole whereof, together with interest from the day of its receipt, is still due & unpaid.

And the said attorney of the said United States, in their name and behalf, further shows that, on the 5th day of May, 1866, the said Lawrence P. Bayne, the said Honeywell, and the said Hough, became and were insolvent, & not having sufficient to pay their debts, by a deed duly executed & filed on the same day in the office of the clerk of the superior court for Baltimore City, made a voluntary assignment of all the property, real & personal, belonging to them individually or as partners in the firm of Bayne & Co. to William Bayne, who is prayed to be made one of the defendants herein, & to Oscar King & Charles W. Boteler, as trustees, upon trust for the benefit of their creditors, with certain preferences as therein set forth, as more fully appears by said deed & the schedule thereunto annexed, a copy whereof is hereunto annexed marked "Complainants' Exhibit A," & is prayed to be taken as a part hereof.

And the said attorney of the United States, in their name and
5 behalf, further shows that the said trustees accepted the trust created in their favor by the aforesaid deed of assignment, & entered upon the discharge of their duties as such trustees, & took & received possession of a large portion of the estate of the said insolvents, but that shortly after so entering on their duties as trustees the said Oscar King & the said Charles W. Boteler abandoned their trust and ceased to perform any of the duties thereof; & having failed to file in the office of the *of the* superior court for Baltimore City an approved bond with sureties for the faithful discharge of their duties in the time & in the manner prescribed by the laws of the State of Maryland, such proceedings were thereupon had that according to the laws of said State it was decreed that the said King & the said Boteler be removed from their office as trustees & and that the said Allen B. Chapman & the said Horatio R. Riddle, prayed to be made defendants herein, be appointed & substituted as trustees in the place & stead of the said King & the said Boteler, but with like powers; &, being so appointed, the said Chapman & the said Riddle accepted their appointment as such trustees, & jointly with the said William Bayne entered upon & still continue to discharge their duties as substituted trustees.

And the said attorney of the said United States, in their name
6 & behalf, charges that the said William Bayne, the said Allen B. Chapman, & the said Horatio R. Riddle are in the possession of valuable assets belonging to the said insolvents, consisting of cash, notes of hand, & other kinds & descriptions of property, & derived not only

from the assets of the insolvent firm of Bayne & Co., but from the individual estate of the partners of said firm, the exact value & amount whereof is unknown to the said attorney, but which he believes to be considerable & to exceed the sum of eighty thousand dollars; that by reason of the premises the said United States is entitled in the distribution of all of said assets to a priority over all the creditors of the insolvents, & particularly over the creditors preferred by the said deed of assignment, a copy whereof is hereunto annexed; by virtue whereof the said United States are entitled to demand a discovery from the said last-named trustees of all the assets of every kind & description in their hands as such trustees, together with an account of their management of such trust estate, wherein they should be charged, not only with such assets as they may have received, but with such as they could or ought to have received, and are further entitled to a decree requiring them to pay over to the United States any & all sums of money collected or in hand & such as they may from time to time collect & receive, as soon as they so collect & receive the same.

7 And the said attorney of the United States, in their name & behalf, charges that all the defendants hereinbefore named set up or claim some interest adverse to the claim of the United States, or deny the validity & correctness of the same, & assert that the preference & disposition of the assets contained in said deed of assignment, a copy whereof is hereunto annexed, & marked "Exh. A," are good & sufficient in law & equity to defeat the claim of the said United States as hereinbefore set out, but your orators show that they are entitled to recover their said claim as against the said defendants & to have the relief hereinafter prayed; & your orators further say that the Merchants' National Bank of Washington City has become insolvent & that James C. Kennedy has been lawfully appointed its receiver, & that the said Merchants' National Bank & the said Kennedy are non-residents of the State of Maryland & are without the jurisdiction of this court, and also William B. Jones, Oscar King, Thomas A. Waters, & said persons trading as Conway, Haughten & Co., are non-residents of Maryland, & are without the jurisdiction of this court.

To the end, therefore, that the said William Bayne, the said Allen B. Chapman, & the said Horatio R. Riddle, trustees as aforesaid, may be required to file an account under oath of all the assets of every

8 kind belonging to the said insolvent firm of Bayne & Co., or to the individual members thereof, which they, the said trustees, have or should have collected & received, & of their management & distribution of the same, & that they be ordered & adjudged to pay to the said United States, until their claim as aforesaid is satisfied, all sums of money already received by them, & that they devote all the assets in their hands to the extinguishment of the said claim, & that they be adjudged responsible to the said United States for all losses suffered or to be suffered by their failure to perform their duties as such trustees, & that such other & further relief may be given to your orators in the premises as justice & equity demand; and that all the defendants, naming them in full, may answer this bill & show cause, if any they or any of them have, why the said United States should not have the relief prayed & such other & general relief as the nature of the case may require—

May it please your honors to grant unto your orators the United States writ of subpœna, directed to the said William Bayne, Horatio R. Riddle, Allen B. Chapman, trustees; Lawrence P. Bayne, William T. Hough, & John Honeywell, trading as Bayne & Co.· Alvin N. Bastable

& Gilbert N. Bastable, trading as A. N. Bastable; Alexander Kirkland, Robert R. Kirkland, and Daniel Chase, trading, together with the said Allen A. Chapman, as Kirkland, Chase & Co.; James Turbott, W.
9 M. Meyenberg, John J. Chancellor, O. Brehme, all citizens of the State of Maryland, William Belt & Martha, his wife, William B. Jones & Richard L. Brown, trading as William B. Jones & Co., and certain persons trading as Conway, Haughten & Co., citizens of the State of Virginia, Oscar King, a citizen of the State of New York, & Thomas A. Waters, a citizen of the State of Virginia.

AND'W STERETT RIDGELY,
U. S. Atty. for Maryland.
R. J. BRENT,
For Complainant by Special Authority.

The exhibit referred to in the foregoing bill is as follows, to wit:

EXH. A.

LAWRENCE P. BAYNE, JOHN HONEYWELL, AND William T. Hough, copartners, trading as Bayne & Co., assignment for the benefit of creditors,
to
WILLIAM BAYNE, OSCAR KING, AND CHARLES W. Boteler.

One $200, also one $50 stamps, each marked L. P. B., J. H., W. T. H., 5th May, 1866.

This deed, made this fifth day of May, in the year eighteen hundred and sixty-six, between Lawrence P. Bayne, John Honeywell, and William T. Hough, of Baltimore City, lately trading in said city as brokers and bankers, under the name and firm of Bayne & Co., of the first
10 part, and William Bayne and Oscar King, of said city, and Charles W. Boteler, of Washington City, of the other part, witnesseth: That the said parties hereto of the first part, for and in consideration of the sum of one dollar current money to them in hand paid by the said parties hereto of the second part, at or before the sealing and delivery of these presents, and the receipt whereof is hereby acknowledged, and to provide, as far as may be practicable, for the payment of all debts due and owing by them, whether the same were contracted by them jointly in the prosecution of their said joint business, or by any of them severally or individualy, have granted, bargained, and sold, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, assign, transfer, and set over unto the said parties hereto of the second part, and the survivors & survivor of them, all the real and personal property and effects of the said parties hereto of the first part, and every of them, and all debts, dues, and demands whatsoever now due and owing, or to become due and owing, from any and every person and persons whatsoever to the said parties hereto of the first part, or any or either of them: to have and to hold all and singular the property and effects, rights and credits hereby granted unto the said parties hereto of the second part, and the survivors and survivor of them, and to their and his own proper use and behoof, in trust, nevertheless, that the said parties hereto of the second part, and
11 the survivors and survivor of them, shall and will, as soon as

conveniently may be, after the sealing and delivery of these presents, sell and dispose of all and singular the real and personal property and effects hereby granted, at public or private sale, at such time and times, in such manner and on such terms, as they and he may deem expedient; and the proceeds of such sales as received, together with the proceeds of the said debts, dues, and demands hereby assigned, as collected, to apply in manner following, that is to say: In the first place, to defray the costs and charges attending the execution of this trust, including a commission of six per cent. on the amount collected and received, to be retained by the said trustees for their trouble in the execution of this trust; and secondly, to the payment of the several creditors of the said parties hereto of the first part, named in the schedule hereunto annexed, of the sums of money thereby admitted to be due to them, respectively, amounting in the aggregate to the sum of seventy-five thousand and seventy-seven dollars; and thirdly, to the payment of the Merchants' National Bank of Washington of the sum of one hundred and fifty thousand dollars, in part payment of a larger debt hereby admitted to be due and owing from the said parties hereto of the first part to the said bank; and fourthly, to the payment of the claims of such of the creditors of the said parties hereto of the first part, contracted in the prosecution of their aforesaid copartnership trade, and including the residue of the said claim
12 of the said Merchants' National Bank of Washington, as shall, on or before the first day of July next, execute, deliver to the said parties hereto of the second part, full and absolute releases and acquittances to the said parties hereto of the first part, of and from their aforesaid claims, respectively; and fifthly, to the payment of the claims *of the claims* of all other creditors of the said parties hereto of the first part, whether joint or several, and without any distinction or priority whatsoever, other than that so much of the said surplus as consists of the proceeds or avails of joint property or effects shall be applied primarily to the payment of debts due and owing by the said parties hereto of the first part, jointly, in preference to debts due and owing by the said parties, or any of them, severally; and that so much of the said surplus as consists of the proceeds or avails of the separate property and effects of any one of said parties shall be applied primarily to the payment of debts due and owing by the said party severally, in preference to debts due and owing by the said parties jointly, or any other of them separately. And if the said trust-fund, or such part thereof as is hereby made applicable to any class of creditors, shall prove inadequate to the payment in full of all the claims of the said class, then such part of said trust-fund shall be distributed amongst all the creditors constituting said class so provided
13 for, rateably and proportionally, to the amounts of their several & respective claims.

And, lastly, if any surplus shall remain after the entire payment of all debts due and owing by the said parties of the first part, whether the same be due and owing by them jointly or by any or either of them separately, then that the said surplus be paid over to the parties aforesaid, as the said parties hereto of the second part shall deem just and equitable, having due regard to the interests of the said parties hereto of the first part, and each of them, in the property and effects hereby assigned and transferred. And the said parties hereto of the first part, jointly, and each of them for himself, severally, do hereby constitute and appoint the said parties hereto of the second part, and the survivors & survivor of them, their and his true and lawful attorneys and attor-

ney for them and him, and in their and his name, as the case may require, to ask, demand, sue for, recover, and receive all such sums of money, debts, dues, and demands whatsoever that are now due & owing, or may become due and owing, to the parties hereto of the first part, or any or either of them, and for the same when received acquittances and discharges to execute and deliver, and also to compromise, adjust, arbitrate, and settle, at their discretion, all and every dispute or difference which has arisen, or may arise, respecting any claim or demand
14 hereby assigned, and to compound any such claim or demand as they may deem expedient.

Witness the hands and seals of the parties hereto of the first part, the day and year first hereinbefore written.

L. P. BAYNE. [SEAL.]
JNO. HONEYWELL. [SEAL.]
W. T. HOUGH. [SEAL.]

Witness:
STOCKETT MATHEWS.
R. C. MURRAY.

STATE OF MARYLAND,
Baltimore City, to wit:

On this fifth day of May, in the year eighteen hundred and sixty-six, before me, a justice of the peace in and for said city, personally appeared the above-named Lawrence P. Bayne, John Honeywell, and William T. Hough, and severally acknowledged the foregoing instrument of writing to be his act and deed. And at the same time also appeared the within-named William Bayne, Oscar King, and Charles W. Boteler, and severally made oath that the consideration expressed in the foregoing instrument of writing is true and bona fide, as therein set forth.

R. C. MURRAY, *J. P.*

[5 c. stamp, marked R. C. M., May 5, 1866.]

Schedule of creditors of the first class provided for by the foregoing instrument of writing.

Conoway, Haughten & Co	1,000
15 John J. Chancillor	850
A. N. Bastable & Co	5,400
Thomas A. Waters	1,500
Mrs. Martha Bell	8,000
Samuel Turbutt	1,800
John Deitz	400
W. M. Meyenberg	1,300
Kirkland, Chase & Co	35,000
Oscar King	7,827
William D. Jones & Co	9,000
O. Breahme & Co	3,000
	$75,077

Received for record May 5, 1866, at 11¼ o'clock a. m. Same day recorded and examined.

P'r ALFORD MACE, *Clerk.*

In testimony that the foregoing is a true copy, taken from liber A M, No. 303, folio 316, &c., one of the land records of Balto. City, I hereby

set my hand and affix the seal of the superior court of Balto. City, on this 5th day of November, A. D. 1867.

[SEAL.] ALFORD MACE, *Clerk.*

16 Whereupon subpœna issued as prayed, in form following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To William Bayne, Horatio R. Riddle, Allen B. Chapman, trustees; Lawrence P. Bayne, William T. Hough, & John Honeywell, trading as Bayne & Co.; Alvin N. Bastable & Gilbert N. Bastable, trading as A. N. Bastable; Alexander Kirkland, Robert R. Kirkland, and Daniel Chase, trading, together with the said Allen A. Chapman, as Kirkland, Chase & Co.; Samuel Turbott, W. M. Meyenberg, John J. Chancellor, O. Brehme, all citizens of the State of Maryland; William Belt and Martha, his wife, William B. Jones & Richard L. Brown, trading as William B. Jones & Co., and certain persons trading as Conway, Haughton & Co., of the State of Virginia; Oscar King, a citizen of the State of New York; & Thomas A. Waters, a citizen of the State of Virginia, greeting:

[SEAL OF THE CT. CT.] You are hereby commanded that, all excuses and delays set aside, you be and appear at the clerk's office of the circuit court of the United States for the fourth circuit & district of Maryland, at the United States court-house in the city of Baltimore, on the first Monday in January inst., to answer unto the bill of complaint of the United States of America in the said court exhibited against you.

17 Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the honorable S. P. Chase, Chief-Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 3d day of January, 1868.

JAMES W. CHEW,
Clk. Circuit Court.

At which mentioned first Monday in January, in the year of our Lord 1868, being the day of the return of the foregoing subpœna, the marshal of the district aforesaid made return thereof to the court here, thereon endorsed, to wit:

"Summoned Bayne, Chapman, and Honeywell; non est the others.
" W. BONIFANT,
" *U. S. Marshall.*"

And afterwards, to wit, on the 13th day of January, in the year 1868, William Bayne, Horatio R. Riddle, & Allen A. Chapman appeared in court here by S. Teakle Wallis, esquire, their attorney.

And afterwards, to wit, on the 18th day of January, in the year last aforesaid, R. Stockett Mathews, esquire, appears for the trustees, Wm. Bayne, Allen A. Chapman, & Horatio R. Riddle.

18 And afterwards, to wit, on the 4th day of March, in the year last aforesaid, subpœna was renewed in form following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Lawrence P. Bayne, William T. Hough, Alvin N. Bastable, & Gilbert N. Bastable, Alexander Kirkland, Robert R. Kirkland, and Daniel Chase, Samuel Turbott, W. M. Meyenberg, John J. Chancellor, O. Brehme, William Belt & Martha, his wife, William B. Jones, & Richard L. Brown, and certain persons trading as Conway, Haughton & Co., Oscar King, & Thomas S. Waters, greeting:

You are hereby commanded that, all excuses and delays set aside, you be and appear at the clerk's office of the circuit court of the United States for the fourth circuit & district of Maryland, at the United States court-house, in the city of Baltimore, on the first Monday in April next, to answer unto the bill of complaint of the United States of America in the said court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the honorable S. P. Chase, Chief-Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-seven.

19 Issued 4th day of March, 1868.

JAMES W. CHEW,
Clk. Circuit Court.

At which mentioned first Monday in April, in the year last aforesaid, being the day of the return of the foregoing subpœna, the marshall for the district of Maryland made return thereof to the court here, thereon endorsed, to wit:

"Summoned Bayne, Hough, Bastable & Bastable, Kirkland & Kirkland, Chase, Chancellor, & O. Brehme; n. 'spt the others.

"W. BONIFANT,
"*U. S. Marshall.*"

And afterwards, to wit, on the 1st day of December, in the year last aforesaid, William Bayne, Allen A. Chapman, and Horatio R. Riddle filed in the court here the following answer, to wit:

To the hon'ble the judges of the circuit court of the United States within & for the district of Maryland, sitting in equity:

The joint and several answer of William Bayne, Allen A. Chapman, (in the bill called Allen B.) and Horatio R. Riddle, three of the defendants to the bill of complaint of the United States of America, by A. S. Ridgely, its attorney, against them in this hon'ble court exhibited.

20 These respondents, reserving to themselves all right and manner of exception to the said bill of complaint, for answer say: that they admit that heretofore, to wit, in the month of April, 1866, & for some time previously thereto, the defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, were engaged in the city of Baltimore in the business of bankers and brokers, trading under the name & style of Bayne & Co.; that on or about the 5th day of May, 1866, the said firm failed in business & became insolvent, & not having sufficient to pay their debts, by a deed duly executed and filed on the same day in the clerk's office of the superior court of Baltimore City, the said Lawrence P. Bayne, John Honeywell, and William T. Hough made a voluntary assignment of all the property, real and personal, belonging

to them individually, or as partners, in the firm of Bayne & Co., to William Bayne, one of these respondents, and to Oscar King and Charles W. Boteler, who are also named as defendants in the bill, as trustees, upon trust, for the benefit of their creditors, with certain preferences as therein set forth, but for greater certainty in regard thereto, and the contents thereof, these respondents crave leave to refer to said deed and the schedule thereto annexed, when the same shall be produced.

And these respondents further admit that, subsequently to the execution of said deed of assignment, the said Oscar King and
21 Charles W. Boteler, two of the trustees named in said deed, failing to give bond, with sureties approved, for the faithful discharge of their duties as such trustees, in the time and in the manner prescribed by the laws of the State of Maryland, upon certain proceedings had in the superior court of Baltimore City, upon the equity side thereof, to which the said James C. Kennedy, named in said bill as receiver of the Merchants' National Bank of Washington City, was a party, & upon the application & with the consent of him, the said James C. Kennedy, by whom these respondents are informed & verily believe these present proceedings are instigated, the said Oscar King and Charles W. Boteler were displaced from the said trust, and these respondents, Allen A. Chapman (named Allen B. in the bill) and Horatio R. Riddle were appointed and substituted as trustees in the stead of said King and Boteler, and accepted their appointment as such, and, together with the said William Bayne, the other of these respondents, jointly entered upon their duties as trustees, all having duly bonded as by law required, & have collected as far as practicable the assets to them by said deed conveyed.

And these respondents, further answering, severally say, that they are unable, from their personal knowledge, to answer whether, as stated in the bill, in the month of April, 1868, the United States had large
22 sums of money on deposit in the First National Bank of Washington City, or what portion of such sums, if any, was deposited to the credit of E. E. Paulding, colonel & paymaster in the Army of said United States, nor have these respondents, or either of them, any personal knowledge of the transactions recited in said bill, between the said First National Bank and the Merchants' National Bank of Washington City, the said Paulding and the said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, under the firm of Bayne & Co.; or of the alleged, or any other, means & contrivance whereby funds deposited to the credit of said Paulding were withdrawn from said First National Bank, & through the instrumentality of said Merchants' National Bank, or otherwise, applied to the use & benefit of said defendants, Lawrence P. Bayne, John Honeywell, & William T. Hough, under their said name & style of Bayne & Co., as charged in said bill; & these respondents do not believe, & therefore do not admit, that the allegations in said bill in this behalf are true; and these respondents do deny that by reason of said alleged transactions, or of any other matters contained in said bill or otherwise, the said United States are or became creditors of said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, under their firm of Bayne & Co., or have any of the pretended rights and equities set up in said bill as against these respondents or the trust-funds in their hands.

23 And these respondents further, severally, say that they have been informed by report, but have no personal knowledge, as to the fact or circumstances of the failure & insolvency of said Merchants' National Bank of Washington City, or of the appointment of said

James C. Kennedy as its receiver, though they believe he was so appointed, and they further believe that the United States may be a creditor of said bank, though they aver that it is not of Bayne & Co., as alleged in said bill, and they have also learned that said bank made large loans to said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, under their said firm of Bayne & Co., which loans these respondents are informed were in excess of the limit allowed by the act of Congress known as the national-banking law, and in violation of the provisions of said law; but as to the effect of said violation upon the rights of said Merchants' National Bank, as a creditor of said Bayne & Co., these respondents are not advised, & respectfully submit the same for the consideration and determination of this hon'ble court when it may properly arise.

And these respondents, further answering, say that there are now pending in the circuit court for Baltimore City certain proceedings in equity, instituted long before this suit was brought, by a certain Robert B. Bolling, of Virginia, claiming to be a creditor of said firm of
24 Bayne & Co., (to which said proceedings these respondents are parties defendants,) having for their object to set aside or cause to be set aside the said deed of assignment executed by the said Lawrence P. Bayne, John Honeywell, and William T. Hough, on the said 5th day of May, 1866, & under & by virtue of which & of the aforesaid proceedings had in the superior court of Baltimore City these respondents assume to be & act as trustees, as fraudulent & void, and that said Robert B. Bolling ought to be, but is not, made a party to the bill in this cause.

These respondents, submitting therefore to the judgment, order, and direction of this honorable court, say that until the claim of the United States to be regarded as a creditor of the said firm of Bayne & Co., and to a priority in the disposition of the assets of said firm & of the individual members of the same over the other creditors of the insolvents, and particularly over the creditors preferred by said deed of assignment, shall be judicially determined, these respondents are not bound in equity to render an account, as prayed for, either of the assets in their hands or of their administration of their said trust, although these respondents are, and at all times have been, ready & willing to render an account of the same to whomsoever may be rightfully entitled thereto; and they charge that the said United States have not such a right & interest in the premises or in the matters & things stated in said
25 bill as to be entitled to a discovery from these respondents in regard to said matters & things, or any of them, without this, that there is any other matter, cause, or thing in said bill contained material & necessary for these respondents to make answer unto, & not herein & hereby well & sufficiently answered, is true to the knowledge or belief of these respondents or either of them; all of which matters & things these respondents are ready & willing to prove as this hon'ble court shall direct, & humbly pray to be hence dismissed with their reasonable costs & charges in this behalf most wrongfully sustained.

S. T. WALLIS,
T. W. HALL, JR.,
For Resp'd'ts.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

Personally appeared before the undersigned, a commissioner duly qualified and acting in & for the circuit & district aforesaid, the within-

named William Bayne, Allen A. Chapman, and Horatio R. Riddle, &, being duly sworn, say that the matters stated in the answer, as being within the respondents' own knowledge, are true, & that those which are not stated to be within their own knowledge, are true to the best of respondents' knowledge and belief.

26

WM. BAYNE.
ALLEN A. CHAPMAN.
H. R. RIDDLE.

Subscribed & sworn to before me this thirtieth day of November, A. D. 1868.

[SEAL.] JNO. S. HANAN,
U. S. Commr.

And afterwards, to wit, on the 7th day of December, in the year last aforesaid, William Bell & Martha, his wife, filed in the court here the following answer, to wit:

To the hon'ble judges of the circuit court of the United States within & for the district of Maryland, sitting in equity:

The answer of William Bell and Martha, his wife, two of the defendants to the bill of complaint of the United States of America, by A. S. Ridgely, its attorney, against them in this hon'ble court exhibited.

These respondents, reserving to themselves all right & manner of exception to the said bill of complaint, for answer thereto say that they admit that heretofore, to wit, in the month of April, 1866, & for some time previous thereto, the defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, were engaged in business in the city of Baltimore as bankers & brokers, trading under the firm of Bayne &

27 Co.; that on or about the 5th day of May, 1866, the said firm failed in business & became insolvent, and that by reason & in consideration thereof the said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, by a certain deed, duly executed and filed on the same day in the clerk's office of the superior court of Baltimore City, made a voluntary assignment of all the property, real & personal, belonging to them individually, or as partners in the firm of Bayne & Co., to the defendants, William Bayne, Oscar King, and Charles W. Boteler, as trustees, upon trust for the benefit of their creditors, with certain preferences therein set forth; but for greater certainty as to the contents of said deed, these respondents crave leave to refer to the same, & to the schedule thereto annexed when the same shall be produced.

These respondents, further answering, say that they are informed & believe it to be true that the said Oscar King and Charles W. Boteler, two of the trustees named in said deed, failing to give bond for the faithful discharge of their duties as such, in the time & manner required by the laws of Maryland, upon certain proceedings had in the superior court of Baltimore City, upon the equity side thereof, which said proceedings were instituted by the said James C. Kennedy, named in said bill as the receiver on the part of the United States of the said Merchants' National Bank of Baltimore City, & by whom these respondents are informed & verily believe that these present proceedings are instigated & set on foot, the said Oscar King and Charles W. Boteler were re-

28 moved & displaced from their said trust, and the said Allen A. Chapman and Horatio R. Riddle were, upon the application &

with the consent of the said Kennedy, duly appointed & substituted as trustees in the stead of said King and Boteler, and together with the said William Bayne, having all duly bonded as by law required, jointly entered upon their duties as said trustees, &, as these respondents are informed & verily believe, have collected, as far as practicable, the assets by said deed conveyed.

But these respondents do not know and are wholly unable to answer whether, as stated in said bill, in said month of April, 1866, the United States had large sums of money deposited in the First National Bank of Washington City, or what portion of such sums, if any, were deposited in the name of Colonel E. E. Paulding, an officer in the Pay Department of the Army of said United States, nor have these respondents any personal knowledge of the transaction recited in said bill between the said First National Bank and the Merchants' National Bank of Washington City, the said Paulding, and the defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, under the firm of Bayne & Co., or of any other of the matters and things in said bill alleged; but these respondents deny that by reason of said matters & things in said bill alleged or otherwise the United States are or became creditors of the said defendants, Lawrence P. Bayne, John Honeywell, and
29 William T. Hough, trading under the firm of Bayne & Co., or have any of the pretended rights & equities set up in said bill, or any right in any way or for any purpose to participate or intermeddle in the affairs of said trust, or in the distribution of the assets in the hands of said trustees.

And these respondents, further answering, say that they are creditors of the said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, trading under the firm of Bayne & Co., to the amount & value of six thousand two hundred dollars in gold coin, deposited with the said firm of Bayne & Co. on the 3d day of January, 1866, and still remaining in their hands at the time of their said failure & insolvency, and of the execution of said deed of assignment on the 5th of May, 1866, for which said amount these respondents hold a certificate of deposit issued by said firm, in the name of said Martha Bell, and in consideration whereof said Martha Bell is named & included as a preferred creditor of the first class, for the amount of eight thousand dollars in currency, in said deed of assignment executed by said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, on said 5th day of May, 1866, & recorded in the clerk's office of the superior court of Baltimore City aforesaid; and these respondents further say, that their said preferred claim of eight thousand dollars is much less than the value of the gold coin deposited by them with said firm
30 of Bayne & Co., either at the time when the same was deposited or at the date of the failure & insolvency of said firm, and that said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, are consequently indebted to these respondents in a much larger sum than that for which they are preferred as creditors in the schedule annexed to said deed.

And these respondents, further answering, say that more than two years have elapsed since the insolvency of said firm of Bayne & Co. & the execution of said assignment, and that during that time the trustees have made large collections of the assets conveyed by said deed, to a sufficient amount, as these respondents are informed & verily believe, to satisfy all the claims preferred as of creditors of the first class, but no distribution of said assets has been had, & the execution of said trust, and the satisfaction of the claim of these respondents so preferred

as aforesaid, have been hindered & delayed by these proceedings of the United States, and of others claiming to be creditors of said firm of Bayne & Co., and seeking to interfere with the administration of said trust, and the disposition of the trust-funds in the hands of the trustees, to the great injury and detriment of these respondents; and these respondents further say, that there are now pending in the circuit court for Baltimore City certain proceedings instituted by a certain Robert B. Bolling, of Virginia, claiming to be a creditor of said firm of
31 Bayne & Co., having for their object to set aside said deed & the preferences thereby created, as fraudulent and void, & that said Robert B. Bolling ought to be & is not a party to this suit.

These respondents therefore pray that such action may be taken by this hon'ble court as may enable said trustees to proceed with the execution of their said trust, free from further vexatious embarras'ment and delay, and to distribute the assets in their hands, & ready for distribution as aforesaid, in the manner provided by said deed, so that these respondents may get what is lawfully due them & secured to them by said deed, and that said United States, not being creditors of said firm of Bayne & Co., may not be allowed to intermeddle in the affairs of said trust, but that the said bill may be dismissed with these respondents' costs and charges to them allowed in this behalf most wrongfully sustained.

S. T. WALLIS,
T. W. HALL, JR.,
For Respdts.

UNITED STATES OF AMERICA,
District of Columbia, to wit:

Personally appeared before the undersigned, a commissioner duly qualified & acting in & for the circuit & district aforesaid, the above-named William Bell, & being duly sworn, says that the matters
32 & things stated in the foregoing answer within his own knowledge are true, & the statements made upon information of others he believes to be true.

WM. BELL.

Subscribed & sworn to before me this 3d day of December, 1868.
[COMMR'S SEAL] EDM. F. BROWN,
United States Commissioner & Notary Public.

And afterwards, to wit, on the 3rd day of June, in the year of our Lord, 1869, the following order was entered and filed, to wit:

U. S. circuit court for the district of Maryland.

UNITED STATES
vs.
BAYNE'S TRUSTEES & OTHERS.

Mr. CHEW: Enter an order that the bill be taken pro confesso against the following defendants, returned served with subpœna, but who have not filed plea, demurrer, or answer to the bill herein, to wit: Lawrence P. Bayne, Wm. T. Hough, John Honeywell, Alvin N. Bastable & Gilbert N. Bastable, R. R. Kirkland, Alexander Kirkland, Daniel
33 Chase, trading as Kirkland, Chase & Co., & John J. Chancellor; and enter general replication to answers of William Bayne,

with the consent of the said Kennedy, duly appointed & substituted as trustees in the stead of said King and Boteler, and together with the said William Bayne, having all duly bonded as by law required, jointly entered upon their duties as said trustees, &, as these respondents are informed & verily believe, have collected, as far as practicable, the assets by said deed conveyed.

But these respondents do not know and are wholly unable to answer whether, as stated in said bill, in said month of April, 1866, the United States had large sums of money deposited in the First National Bank of Washington City, or what portion of such sums, if any, were deposited in the name of Colonel E. E. Paulding, an officer in the Pay Department of the Army of said United States, nor have these respondents any personal knowledge of the transaction recited in said bill between the said First National Bank and the Merchants' National Bank of Washington City, the said Paulding, and the defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, under the firm of Bayne & Co., or of any other of the matters and things in said bill alleged; but these respondents deny that by reason of said matters & things in said bill alleged or otherwise the United States are or became creditors of the said defendants, Lawrence P. Bayne, John Honeywell, and
29 William T. Hough, trading under the firm of Bayne & Co., or have any of the pretended rights & equities set up in said bill, or any right in any way or for any purpose to participate or intermeddle in the affairs of said trust, or in the distribution of the assets in the hands of said trustees.

And these respondents, further answering, say that they are creditors of the said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, trading under the firm of Bayne & Co., to the amount & value of six thousand two hundred dollars in gold coin, deposited with the said firm of Bayne & Co. on the 3d day of January, 1866, and still remaining in their hands at the time of their said failure & insolvency, and of the execution of said deed of assignment on the 5th of May, 1866, for which said amount these respondents hold a certificate of deposit issued by said firm, in the name of said Martha Bell, and in consideration whereof said Martha Bell is named & included as a preferred creditor of the first class, for the amount of eight thousand dollars in currency, in said deed of assignment executed by said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, on said 5th day of May, 1866, & recorded in the clerk's office of the superior court of Baltimore City aforesaid; and these respondents further say, that their said preferred claim of eight thousand dollars is much less than the value of the gold coin deposited by them with said firm
30 of Bayne & Co., either at the time when the same was deposited or at the date of the failure & insolvency of said firm, and that said defendants, Lawrence P. Bayne, John Honeywell, and William T. Hough, are consequently indebted to these respondents in a much larger sum than that for which they are preferred as creditors in the schedule annexed to said deed.

And these respondents, further answering, say that more than two years have elapsed since the insolvency of said firm of Bayne & Co. & the execution of said assignment, and that during that time the trustees have made large collections of the assets conveyed by said deed, to a sufficient amount, as these respondents are informed & verily believe, to satisfy all the claims preferred as of creditors of the first class, but no distribution of said assets has been had, & the execution of said trust, and the satisfaction of the claim of these respondents so preferred

as aforesaid, have been hindered & delayed by these proceedings of the United States, and of others claiming to be creditors of said firm of Bayne & Co., and seeking to interfere with the administration of said trust, and the disposition of the trust-funds in the hands of the trustees, to the great injury and detriment of these respondents; and these respondents further say, that there are now pending in the circuit court for Baltimore City certain proceedings instituted by a certain Robert B. Bolling, of Virginia, claiming to be a creditor of said firm of
31 Bayne & Co., having for their object to set aside said deed & the preferences thereby created, as fraudulent and void, & that said Robert B. Bolling ought to be & is not a party to this suit.

These respondents therefore pray that such action may be taken by this hon'ble court as may enable said trustees to proceed with the execution of their said trust, free from further vexatious embarras'ment and delay, and to distribute the assets in their hands, & ready for distribution as aforesaid, in the manner provided by said deed, so that these respondents may get what is lawfully due them & secured to them by said deed, and that said United States, not being creditors of said firm of Bayne & Co., may not be allowed to intermeddle in the affairs of said trust, but that the said bill may be dismissed with these respondents' costs and charges to them allowed in this behalf most wrongfully sustained.

S. T. WALLIS,
T. W. HALL, JR.,
For Respdts.

UNITED STATES OF AMERICA,
District of Columbia, to wit:

Personally appeared before the undersigned, a commissioner duly qualified & acting in & for the circuit & district aforesaid, the above-named William Bell, & being duly sworn, says that the matters
32 & things stated in the foregoing answer within his own knowledge are true, & the statements made upon information of others he believes to be true.

WM. BELL.

Subscribed & sworn to before me this 3d day of December, 1868.
[COMMR'S SEAL] EDM. F. BROWN,
United States Commissioner & Notary Public.

And afterwards, to wit, on the 3rd day of June, in the year of our Lord, 1869, the following order was entered and filed, to wit:

U. S. circuit court for the district of Maryland.

UNITED STATES
vs.
BAYNE'S TRUSTEES & OTHERS.

Mr. CHEW: Enter an order that the bill be taken pro confesso against the following defendants, returned served with subpœna, but who have not filed plea, demurrer, or answer to the bill herein, to wit: Lawrence P. Bayne, Wm. T. Hough, John Honeywell, Alvin N. Bastable & Gilbert N. Bastable, R. R. Kirkland, Alexander Kirkland, Daniel
33 Chase, trading as Kirkland, Chase & Co., & John J. Chancellor; and enter general replication to answers of William Bayne,

Horatio R. Riddle, & Allen A. Chapman, & William Bell & Martha, his wife.

ANDW. STERETT RIDGELY,
Atty. for U. S.

And afterwards, to wit, on the 2nd day of October, in the year last aforesaid, A. A. Bastable, G. M. Bastable, & J. J. Chancellor appeared in court here by Charles Marshall & William A. Fisher, esquires, their solicitors, and filed in court here the following answer, to wit:

To the honorable the judges of the circuit court of the United States for the district of Maryland, sitting in equity:

The joint and several answers of Alvin N. Bastable and Gilbert M. Bastable, trading as A. N. Bastable and Company, and of John J. Chancellor, to the bill of complaint of the United States of America, by A. S. Ridgely, its attorney, exhibited against them in this court:

These respondents, reserving all manner of exceptions to said bill, for answer to so much thereof as they are advised to make answer unto, answering, say, that these respondents admit that in the month of April, 1866, and for some time prior thereto, the defendants, Lawrence
34 P. Bayne, John Honeywell, and William T. Hough, were engaged in the business of bankers and brokers in the city of Baltimore, and that they were so engaged as partners under the style of Bayne & Co.

And these respondents further admit that said Bayne & Co. became insolvent on or about the 5th day of May, 1866, and that the members of said firm on that day executed and filed in the clerk's office of the superior court of Baltimore City a voluntary assignment of all their property, social and personal, to the defendants, William Bayne, Oscar King, and Charles W. Boteler, in trust for the benefit of the creditors of said assignors, with certain preferences therein set forth, and that these respondents were among the class of preferred creditors, the respondent John J. Chancellor being preferred for an amount individually, and being also interested in the amount for which respondents Bastable are preferred, under the name of A. N. Bastable & Co.; but for the terms of said deed, and all its provisions, these respondents pray that reference may be had to the deed itself, or a certified copy thereof, when produced. And these respondents further admit that the said Oscar King and Charles W. Boteler were subsequently removed from the office of trustees under said deed by an order of the superior court of Balti-
more City by reason of the failure of said King and Boteler to
35 give bond as such trustees; but these respondents are informed that said King and Boteler were removed at the instance of one James C. Kennedy, named in said bill as the receiver of the Merchants' National Bank of Washington, and they are informed and verily believe that this suit is also brought at the instigation of said Kennedy. And these respondents further admit that the defendants, Allen A. Chapman and Horatio R. Riddle, were appointed by said superior court to succeed said King and Boteler as trustees under said deed, and they are informed and believe that said Chapman and Riddle were appointed with the consent and approval of said Kennedy. And they further admit that said Chapman & Riddle have qualified as trustees, and accepted their respective appointments; but they are not informed, and cannot say, what part said Chapman and Riddle have taken in the administration and

execution of said trust, nor can they say how they have performed their duties as trustees. But these respondents do not know, and cannot admit, and do not admit, that in the month of April, 1866, the said United States had, as alleged in said bill, a deposit in the First National Bank of Washington City, District of Columbia, of large sums of money, of which more than $200,000, belonging to the Pay Department of their Army, was deposited to the credit of Colonel E. E. Paulding, paymaster in said Army. And these respondents have no personal
36 knowledge, nor any knowledge except from hearsay, and do not therefore admit, that Lawrence P. Bayne and his copartners had knowledge of the alleged deposit in said First National Bank to the credit of said Paymaster Paulding, and they do not know, and therefore do not admit, that said Bayne & Co., or any of them, procured or caused any part of said alleged deposit to the credit of said Paymaster Paulding to be withdrawn and deposited to the credit of said Paulding in the said Merchants' National Bank, as alleged in said bill.

And these respondents have no personal knowledge of, and do not admit, the allegation of said bill that said Bayne & Co., or any member of said firm, procured any funds standing to the credit of said Paymaster Paulding to be transferred to said Merchants' National Bank from said First National Bank for the benefit of said Bayne & Co.; nor do they know or admit that the money so alleged to have been transferred went to the use of said Bayne & Co.; nor do they know or admit that said Merchants' National Bank in said alleged transactions acted as the agent of said Bayne & Co.

And these respondents pray that the complainant may be required to make full proof of all said allegations above referred to; and they deny that by reason of the pretended facts set forth in said allegations, or otherwise, the said complainant became or are creditors of said Bayne & Co., or have any of the rights and equities claimed in said bill.
37 And these respondents say that they are bona-fide creditors of said Bayne and Company to the amount secured to them by said deed of trust.

And they further say that the sum secured to A. N. Bastable and Company consists almost entirely of money deposited by them with Bayne & Company by said firm on the 24th and 25th of April, 1866, a very few days before the insolvency of Bayne & Company was announced. And the defendant, John J. Chancellor, says that he is interested in said sum for which said A. N. Bastable & Co. are preferred in said deed of trust, and that he is also preferred for the sum of $850 due to himself by said firm, which sum represents a special deposit of gold, made by this respondent with said firm, and does not include the premium which said gold bore in the market at the time of said assignment.

And these respondents are advised and respectfully insist that the complainants have no equitable or legal claim upon the funds in the hands of said trustees. And they further represent that a long time elapsed between the execution of said trust-deed and the filing of the bill of the complainants, during all which time the trustees have been acting under said deed of trust with the knowledge of complainants and without interference or objection on their part. And they further represent that, upon the allegations of said bill of complaint, it fully
38 appears that if the alleged breach of trust was committed by said Paulding with reference to the public money to his credit in the First National Bank, in the manner set forth in said bill, the said First National Bank was a party to said breach of trust, and that if the complainants have any right to recover said money from any party the said

First National Bank is responsible therefor, having, as appears by the allegations of said bill, consented to a wrongfull and illegal application of moneys which said bank knew to be the moneys of the complainants and held by it in trust for said complainants, if in fact any trust existed with reference to said money.

And these respondents submit that it would be most inequitable, even admitting the supposed equity of the complainants under other circumstances to regard Bayne & Co. as the debtors of said complainants, to permit said complainants to assert any priority they might be entitled to claim against their debtors, against the funds in the hands of said trustees, which constitute the sole security of these respondents, and which it is not pretended are the funds alleged to have been procured by Bayne & Co. in the manner charged in said bill.

And these respondents further say that they are informed that the trustees of Bayne & Company have collected a large amount of money, and that they have been prevented from distributing the same under said deed of trust by the proceedings of said complainants
39 and by certain proceedings now pending in the circuit court of Baltimore City, instituted by a certain Robert B. Bolling, of Virginia, claiming to be a creditor of Bayne & Co., having for their object to set aside said deed of trust as fraudulent and void; and these respondents are advised that said Bolling should be made a party to this suit.

These respondents therefore pray that such action may be taken in the premises by this honorable court as will enable said trustees to proceed with the execution of said deed of trust without further vexations and damaging delay, and distribute the money now in their hands according to the provisions of said deed of trust, and that said United States may not be permitted longer to interfere with and hinder your respondents and the other creditors of Bayne & Co. from receiving the benefits secured to them by said deed of trust.

And having fully answered, these respondents pray to be hence dismissed with their reasonable costs.

And they will ever, &c.

MARSHALL & FISHER,
Sols. for Responts.

A. N. BASTABLE.
JNO. J. CHANCELLOR.

UNITED STATES OF AMERICA,
District of Maryland, set:

Before the subscriber, a commissioner of the United States duly qualified and acting in and for the district aforesaid, personally
40 appeared the above-named Alvin N. Bastable and John J. Chancellor, and did each make oath that the matters and things stated in the foregoing answer are true to the best of their knowledge, information, & belief. Witness my hand and seal this 1st day of October, 1869. And I further certify that the said Alvin N. Bastable and John J. Chancellor subscribed their names to said answer in my presence.

ROB. LYON ROGERS,
U. S. Commissioner.

And afterwards, to wit, on the 18th day of December, in the year last aforesaid, the following petition was filed in court here, to wit:

Circuit court of the U. States for the district of Maryland.

U. STATES
vs.
BAYNE ET AL.

To the Hon. W. F. Giles, associate justice of the circuit court of the United States for the district of Maryland:

The petition of the above complainant respectfully sheweth that, by consent of counsel, testimony is now being taken in Washington in the above cause; that on the examination of W. T. Huntington, an important witness for your petitioner, on the 16th December instant, your
41 petitioner is advised that it will be necessary to prove by testimony in New York that one hundred thousand dollars of the public monies of the United States were placed to the credit of Bayne & Co. in New York by the telegram of said Huntington & were applied to the private uses of Bayne & Co.; that said testimony in New York is necessary for the purposes of this cause. Wherefore your petitioner prays that a special examiner may be appointed in New York for the taking of said testimony & that an extension of thirty days may be allowed for completing the testimony in this case.

R. J. BRENT,
For the U. States.
A. STIRLING, JR.,
U. S. Atty.

Whereupon the court passed the following order, to wit:
Ordered, this 18th day of Dec., 1869, that J. Betts Metcalf be & he is hereby appointed special examiner to take depositions in this cause, & that thirty days be allowed each party from this date for the taking of testimony, with leave to the defendants to apply for a further extension of time.

WILLIAM F. GILES.

I assent to the above application & the passage of the order above, it being understood that the respondents shall have such extension of time as may be necessary for their rebutting testimony.
42 Decr. 18th, 1869.

S. T. WALLIS,
Sol. for Respdts.

And afterwards, to wit, on the 31st day of December, in the year last aforesaid, the following depositions were filed in the court here, to wit:

Circuit court of the United States for the district of Maryland.

U. STATES
vs.
BAYNE ET AL.

To the Hon. W. F. Giles, associate justice of the circuit court of the United States for the district of Maryland:

The petition of the above complainant respectfully sheweth that, by consent of counsel, testimony is now being taken in Washington in the

above cause; that on the examination of W. S. Huntington, an important witness for your petitioner, on the 16th December instant, your petitioner is advised that it will be necessary to prove by testimony in New York that one hundred thousand dollars of the public monies of the United States were placed to the credit of Bayne & Co. in New York by the telegram of said Huntington, & were applied to the private uses of Bayne & Co.; that said testimony in New York is necessary for the purposes of this cause. Wherefore your petitioner prays that
43 a special examiner may be appointed in New York for the taking of said testimony, & that an extension of thirty days may be allowed for completing the testimony in this case.

R. J. BRENT,
For the U. States.
A. STERLING, JR.,
U. S. Atty.

Ordered, this 18th day of December, 1869, that T. Betts Metcalf be, and he is hereby, appointed special examiner to take depositions in this cause, & that thirty days be allowed each party from this date for the taking of testimony, with leave to the defendants to apply for a further extension of time.

WILLIAM F. GILES.

True copy. Test:

JAS. W. CHEW,
Clerk Circuit Court U. S.

Circuit court of the U. S. for the district of Maryland.

THE UNITED STATES
versus
BAYNE ET AL. } Notice.

To the defendants in the above-entitled case:

44 You will please to take notice that the complainant in the above-entitled case will take testimony therein before me, at my office, room No. 2, in the Herald Building, No. 218 Broadway, in the city of New York, on Tuesday, the twenty-eighth day of December, 1869, commencing at twelve o'clock, noon, of that day, at which time and place you are hereby notified to be present and put interrogatories if you shall think fit.

Dated New York City, December 20th, 1869.

Yours, &c.,

JAMES BETTS METCALF,
Special Examiner and U. S. Commissioner.

STATE OF NEW YORK,
City and County of New York, ss:

To the honorable the circuit count of the United States for the district of Maryland:

I, James Betts Metcalf, do hereby certify that as special examiner, appointed in the case of the United States against Bayne and others, as shown by the order of your honorable court herewith returned, and under and in pursuance of the annexed notice and the service as endorsed thereon, I did at the time and place mentioned in the said no-

tice, in behalf of the complainant, take the depositions of the following-named witnesses, in the presence of Robert J. Brent, counsel
45 for the complainant, and of Enoch Lewis Lowe, counsel for the trustees of Bayne & Company, defendants in the above cause; that the said Harris C. Fahnestock, being by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Harris C. Fahnestock, and he did thereupon depose, testify, and say as follows:

I am thirty-five years of age. I reside at 292 Madison avenue, in the city of New York. I am, and have been for nearly eight years, a member of the firm of Jay Cooke & Co. We are, and were in 1866, doing business at No. 20 Wall street, in the city of New York. Jay Cooke & Co. received the telegram now produced and marked "Exhibit A, $\frac{28}{12}$, '69, J. B. M.," on the 21 of April, 1866, said telegram being an order from W. S. Huntington, cashier of the First National Bank of Washington, to deposit fifty thousand dollars (in telegram in cipher called "Alexander") with Hoyt, Anthony, Douglas & Co., and fifty thousand dollars with Scott, Capron & Co., both for the credit of Bayne & Co., of Baltimore, in all one hundred thousand dollars, (in telegram in cipher called "Emily.") Each of the aforesaid deposits was duly made on that day in conformity with the order, and reported by us by letter to W. S. Huntington, cash., &c., under the same date.

Cross-examination waived.

46 H. C. FAHNESTOCK.

Sworn to before me this 28 day of December, 1869.

JAMES BETTS METCALF,
Special Examiner & U. S. Commissioner.

EXHIBIT A, $\frac{28}{12}$, '69, J. B. M.

Form No. 2.—140.

[The American Telegraph Co., connecting all the principal cities and towns in the United States. 40. Dated Washington, , 1866; received at 21 Wall street, Apr'l 21st.]

To JAY COOKE:

Deposit Alexander each with Hoyt, Anthony, Douglas & Co. and Scott, Capron & Co., for credit of Bayne & Co., Baltimore; total Emily.

W. S. HUNTINGTON,
Cashr.

23; 153 pd.

And I further certify that Lawrence P. Bayne, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine said Lawrence P. Bayne, and he did thereupon depose, testify, and say as follows:

I am fifty-four years of age. I reside at No. 253 West 24th street, in the city of New York. I was in 1866 a member of the firm of
47 Bayne & Co., in Baltimore. In April, 1866, Bayne & Co. kept an account with Scott, Capron & Co. and with Hoyt, Anthony, Douglas & Co., both of this city. Those accounts were subsequently closed, as is shown by the books of Bayne & Co., and the accounts of

Scott, Capron & Co. and Hoyt, Anthony, Douglass & Co., wh' are now to the best of my belief in the hands of the trustees of Bayne & Co. Before our deed of assignment, to the best of my belief, we had drawn out all our funds from said two firms.

L. P. BAYNE.

Cross-examination waived.

Sworn to before me this 28th day of December, 1869.

JAMES BETTS METCALF,
Special Examiner & U. S. Commissioner.

And I further certify that the further taking of depositions was adjourned by consent of parties until 12 o'clock m., of the 29th of December, 1869, at my office, at which time and place, being sick and unable to attend, the following deposition was taken before William M. Hoes, a notary public of the State of New York, in and for the city and county of New York, and residing therein.

NEW YORK CITY, *December 29th*, 1869.

48 William E. Strong, being duly sworn, deposes and says as follows:

I am thirty-three years of age. I reside at number 122 West Forty-fourth street, in the city of New York. In the year 1866, and previously, I was a member of the firm of Scott, Capron and Company, formerly doing business at number twenty-nine New street, in said city. The account now exhibited, and annexed and marked "Exhibit B, $\frac{29}{12}$, '69, J. B. M.," is a correct copy taken from our books, and also of the account sent by our firm to Bayne & Company, of Baltimore, at the closing of said account. The annexed twelve drafts, numbered and marked J. B. M. 1, J. B. M. 2, J. B. M. 3, J. B. M. 4, J. B. M. 5, J. B. M. 6, J. B. M. 7, J. B. M. 8, J. B. M. 9, J. B. M. 10, J. B. M. 11, J. B. M. 12, are the original vouchers for all the items on the debit side of said account, except the last item of interest and the item on the date of April 23, 1866, for eight thousand and two dollars and thirty-one cents, which was a draft given by Bayne & Company to our firm, which we had cashed, and which being returned protested we charged to their account. I do not know where that draft is; it is not to be found among our papers in the proper place for it.

(The preceding testimony in reference to the protested draft is taken subject to exception.)

Not having found the protested draft with the other vouchers, I do not know where else to search for it.

49 Cross-examined by defendants' counsel:

I do not know of my own knowledge that the above account produced by me, and marked "Exhibit B," is a correct copy of the one sent by my firm to Bayne & Company. I only know that it is a correct copy taken from our books as I have compared it.

WM. E. STRONG.

Subscribed and sworn to before me this 29th day of December, 1869.

[SEAL. W. M. H.]

WM. M. HOES,
Notary Public, N. Y. City.

Mr. James Betts Metcalf, the commissioner, being sick and unable to attend to-day, it is hereby stipulated that the foregoing deposition of

William E. Strong, taken before William M. Hoes, notary public, and by him certified, shall be considered as taken before said James Betts Metcalf, U. S. commissioner, and shall be so certified by him, and we hereby waive such irregularity.

Dated Decr. 29th, 1869, New York City.

E. LOUIS LOWE,
Of Counsel for Defendants.
R. J. BRENT,
For Complainant.

50 "EXHIBIT B" 29, 12, 69.—J. B. M.

DR. *Messrs. Bayne & Co. in account-current with Scott, Capron & Co.* CR.

1866.			1866.		
Apl. 12	To cash	8,500	Apl. 12	By cash	10,000
13	"	263 56	14	"	7,000
14	"	10,000	16	"	10,000
16	"	8,000	18	"	10,000
18	"	10,000	19	"	8,000
19	"	15,000	21	"	50,000
21	"	30,000	28	"	19,605 66
23	"	10,000	May 7	"	2,171 43
"		8,002 31			
26		5,000			
24		12,000			
28	Balance of interest	11 22			
		$116,777 09			$116,777 09

J. B. M. 1.

$8,500. [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 11th, 1866.

Pay to the order of Purvis & Co., eighty-five hundred —— dollars, current funds.

No. 6299.

BAYNE & CO.

To Mess. SCOTT, CAPRON & Co.,
New York.

51 (Endorsed:) Pay Clark, Dodge & Co., order Purvis & Co., p'r Jas. Glasgow, atty. Clark, Dodge & Co. Endorsement guaranteed.

J. B. M. 2.

263\frac{56}{100}$. [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 10th, 1866.

Pay to the order of Kessler & Sutro, two hundred sixty-three $\frac{56}{100}$—— dollars.

No. 6296. BAYNE & CO.

To SCOTT, CAPRON & Co.,
New York.

(Endorsed:) Pay to the order of A. Friedman & Co. Kessler & Sutro. A. Friedman & Co. Importers & Traders' Nat. Bank.

J. B. M. 3.

$10,000. [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 13th, 1866.

Pay to the order of ourselves ten thousand dollars.
No. 6312. BAYNE & CO.

To SCOTT, CAPRON & CO.,
New York.

52 (Endorsed:) Bayne & Co. Pay to the order of W. A. Foitz, C for collection. Mich. Warner, pres't. Paid at the Central Natl. Bank.

J. B. M. 4.

$8,000. [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 14th, 1866.

Pay to the order of W. Remington, eight thousand dollars.
No. 6315. BAYNE & CO.

To SCOTT, CAPRON & CO.,
New York.

(Endorsed:) W. Remington. Pay to the order of H. W. Ford, cashier. R. Mickle, cash. Paid H. W. Ford, cashier.

J. B. M. 5.

$10,000. [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 17th, 1866.

Pay to the order of W. F. Snow ten thousand dollars, current funds.
No. 6330. BAYNE & CO.

To SCOTT, CAPRON & CO.,
New York.

53 (Endorsed:) W. F. Snow, pay to the order of H. W. Ford, cashier. R. Mickle, C. Paid H. W. Ford, cashier.

J. B. M. 6.

$10,000.] [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 18th, 1866.

Pay to the order of Purvis & Co. ten thousand dollars.
No. 6336. BAYNE & CO.
To SCOTT, CAPRON & CO.,
New York.

(Endorsed:) Pay Clark, Dodge & Co., or order. Purvis & Co., p'r Jas. Glasgow, atty. Endorsement guaranteed.

J. B. M. 7.

$5,000.] [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 18th, 1866.

Pay to the order of Robert Mickle, esq., cash'r, five thousand dollars, current funds.

No. 6337. BAYNE & CO.

To SCOTT, CAPRON & CO.,
New York.

54 (Endorsed:) Pay to the order of H. W. Ford, cashier. R. Mickle, C. Paid H. W. Ford, cashier.

J. B. M. 8.

$10,000.] [2-c. stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 20th, 1866.

Pay to the order of Chas. R. Coleman, cash'r, ten thousand dollars, current funds.

No. 6350. BAYNE & CO.

To SCOTT, CAPRON & CO.,
New York.

(Endorsed:) Pay to the order of W. L. Jenkins, cashier. Mich. Warner, pres't. Wm. L. Jenkins, cas., R.

J. B. M. 9.

$20,000.] [2-c. stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 20th, 1866.

Pay to the order of D. H. Metz twenty thousand dollars, current funds.

No. 6354. BAYNE & CO.

To SCOTT, CAPRON & CO.,
New York.

55 (Endorsed:) D. H. Metz, pay to the order of H. W. Ford, cashier. R. Mickle, C. Paid H. W. Ford, cashier.

J. B. M. 10.

$10,000.] [2-cent stamp.]

BANKING-HOUSE OF BAYNE & CO.,
Baltimore, April 21st, 1866.

Pay to the order of Chas. R. Coleman, esq., cash'r, ten thousand dollars.

No. 6359. BAYNE & CO.

To SCOTT, CAPRON & CO.,
New York.

(Endorsed:) Pay to the order of W. L. Jenkins, cashier. Mich. Warner, pres't. Recd. J. P. H.

J. B. M. 11.

$5,000.] [2-cent stamp.]

BANKING-HOUSE OF BAYNE & Co.,
Baltimore, April 25th, 1866.

Pay to the order of Kirkland, Chase & Co. five thousand dollars, current funds.

No. 6369. BAYNE & CO.

To SCOTT, CAPRON & Co.,
New York.

56 (Endorsed:) Kirkland, Chase & Co., pay to order of H. F. Vail, esq., cas'r. J. C. Bridges & Co.

J. B. M. 12.

$12,000.] [2-cent stamp.]

BANKING-HOUSE OF BAYNE & Co.,
Baltimore, April 23, 1866.

Pay to the order of Kirkland, Chase & Co. twelve thousand dollars, current funds.

No. 6364. BAYNE & CO.

To SCOTT, CAPRON & Co.,
New York.

(Endorsed:) Pay to the order of Mess. Kirkland & Van Sacks. Kirkland, Chase & Co. Kirkland & Van Sacks.

All of which I beg leave respectfully to return to your honorable court under the order appointing me sepecial examiner, and under the stipulation of counsel herewith returned, under and by virtue of which I certify to the deposition of William E. Strong as taken before the said William M. Hoes.

In witness whereof I have hereunto subscribed my hand and affixed my official seal as United States commissioner this 30th day of December, A. D. 1869.

[U. S. COMMISS'R'S SEAL.]

57 JAMES BETTS METCALF,
Special Examiner and U. S. Commissioner.

Fees, costs, and disbursts. $30, paid by R. J. Brent, esq.

And afterwards, to wit, on the 10th day of April, in the year of our Lord 1870, the following depositions were filed in court here, to wit:

In the court of the United States for the State of Maryland.

UNITED STATES
v.
RIDDLE & AL., TRUSTEES OF BAYNE & AL.

Depositions of William S. Huntington, David Rittenhouse, & Charles A. Sherman, of the District of Columbia, for and on behalf of the complainant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I hereby certify that on the 28th day of October, A. D. 1869, before

me, John J. Johnson, an examiner in chancery, at 12 m., at my office, No. 389 D street, in said District, was the time appointed to commence taking testimony in said cause, in accordance with the annexed notice, when the said William S. Huntington, David Rittenhouse, and Charles A. Sherman personally came before me, witnesses on behalf of the complainant; and the said William S. Huntington, David Rittenhouse, and Charles A. Sherman, being of lawful age, and being by me first duly cautioned and sworn to tell the truth, the whole truth, and
58 nothing but the truth, touching the matters in controversy in said cause, deposes and says respectively as follows.

JOHN J. JOHNSON,
Examiner in Chancery.

THURSDAY, *Oct. 28th*, 1869.

Met pursuant to the notice hereto annexed, and no witnesses being present for the complainant, it was, on motion of Mr. Brent, for complainant, adjourned till Saturday next, the 30th inst., at 5 o'clock p. m., at the office of R. J. Brent, esq.

JOHN J. JOHNSON,
Examiner in Chancery.

Met pursuant to above. Present: Mr. Brent, for complainant, and Mr. Davidge, for defendants. It being necessary to offer documentary evidence on the part of the United States, and said evidence being on file in the Treasury Department, it was therefore, on motion of Mr. Brent, adjourned till Wednesday next, the 3d inst., at 2 o'clock p. m., for the purpose of going to the Treasury Department to take said testimony.

JOHN J. JOHNSON,
Examiner in Chancery.

Met pursuant to above. Present, Mr. Brent. Mr. Davidge being engaged in an argument before the court, it was agreed to adjourn till Monday, the 8th November, 1869.

JOHN J. JOHNSON,
Examiner in Chancery.

Met pursuant to above adjournment. Present: Mr. Brent, for the United States, and Mr. Davidge, for the defendants; when we waited upon General Spinner, the Treasurer, for examination. After look-
59 ing over and examining the drafts drawn by Paulding, late a paymaster in the U. S. Army, the Treasurer agreed to have certified copies made of the same for the counsel, to be used in said case; after which adjourned till further notice.

JOHN J. JOHNSON,
Examiner in Chancery.

And, to wit, on this 15th day of December, 1869, met pursuant to agreement, at the bank-house of the First National Bank, in this city, for the purpose of examining Wm. S. Huntington. Present: Mr. Kennedy, receiver, and Messrs. Brent and Merrick, counsel for the United States.

Witness not being present, it was further adjourned till Thursday, the 16th inst., at 3 o'clock p. m., at the office of Robert J. Brent, esq., No. 441 5th street, Washington.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to above, when WM. S. HUNTINGTON was duly sworn, deposes and says:

My name is William S. Huntington. I am cashier of 1st National Bank. I herewith produce correct statement of account of Brt. Leut. Col. E. E. Paulding, United States Army paymaster, taken from the books of our bank, the items of which I myself have not verified. (The same is herewith filed and marked "Exhibit W. S. H., No. 1." My
60 attention being called to two items in Paulding's account, dated April 21st, 1866, I say in regard to them that those two checks of $100,000 each were presented to the First National Bank for payment on the day of their date, by C. A. Sherman, cashier of the Merchants' National Bank of Washington, and were paid in accordance with his directions, as follows: $50,000 was deposited by telegraph to the credit of Bayne & Co., with Hoyt, Anthony, Douglass & Co., New York; $50,000 deposited by telegraph to the credit of Bayne & Co., with Scott, Capron & Co., New York; $50,000 was paid to Mr. Sherman in the draft of the First National Bank, Washington, on the Central National Bank, New York, and the balance, $50,000, was paid to Mr. Sherman in money.

I herewith produce the original draft for $50,000, above referred to, on the Central National Bank, cancelled and returned to the First National Bank; a copy of said draft is marked and filed "Exhibit W. S. H., No. 2." This is the draft that was handed to Mr. Sherman at the First National Bank, in part payment of the above checks. The signature is that of H. S. Flynt, who was at the time asst. cashier of the First National Bank. The endorsements upon said draft are as follows: "C. A. Sherman, cashier," with whose handwriting I am familiar. This is his signature.

61 (Mr. Washington, of counsel for defendants, here desires the examiner to take this examination by interrogatories.)

Q. Look at the name upon the back of said draft of Bayne & Co., and say whether you are familiar with their signature, and whether the same is the genuine signature of said firm.

A. Yes, I am familiar with their signature, and the same is in the handwriting of Bayne & Co.

Q. State whether or not you know of any arrangement by which the funds of the United States, or any part thereof, in your bank or the First National Bank, standing to the credit of E. E. Paulding, in April, 1866, were to be transferred to the Merchants' National Bank for the benefit of Bayne & Co., or for the purpose of relieving the financial necessities of Bayne & Co.; and, if so, what that arrangement was, when made, by whom, and how carried out.

(Question objected to as leading, and involves a statement of facts not in evidence, no foundation *not* having been laid.)

A. I knew of no such arrangement. My advice was asked in regard to the propriety of such a transfer, but I declined to give it.

Q. State whether or not you were present at a meeting which took place in this city prior to the 21st of April, 1866, between some of the members of the firm of Bayne & Co. and some of the officers of
62 the Merchants' National Bank, and what transpired at such meeting in regard to the transfer by E. E. Paulding to the Merchants' National Bank of funds to his credit in the First National Bank, and what transpired in regard to the interest Bayne & Co. were to have in the funds so to be transferred.

(Objected to.)

A. Col. Paulding had been applied to by the Merchants' National Bank to transfer from our bank to said Merchants' National Bank.

Being doubtful of the condition of said Merchants' Bank, he requested me to examine into its affairs. I called at said bank and very soon ascertained that a very large proportion of its assets consisted of a balance due from Bayne & Co., and that the solvency of the bank depended almost altogether upon the solvency of Bayne & Co. I being unacquainted with the condition of Bayne & Co., *I* was of course unable to decide as to the solvency of the bank; thereupon discontinued my examination. Late on the evening of the same day Mr. Bayne and some of the officers of the Merchants' Bank called at my house, and there Mr. Bayne attempted to convince me of the solvency of his condition. On the following morning Col. Paulding called upon me, at our bank, and desired to know the result of my examination. I stated to him that the solvency of the Merchants' Bank depended in a
63 great measure upon the solvency of Bayne & Co. If what Bayne had said was true, the bank would come out all right; but not being able to judge of the truth of Bayne's statement, I could not give him any advice in the premises. It was stated, I think, by Mr. Bayne, that if he could get some immediate help he would be saved from failure. I understood that he expected to get some help from the Merchants' National Bank.

Q. How did you so understand that he expected to get help from the Merchants' National Bank, & how was that help to be rendered?

(Objected to.)

A. I presumed he hoped that a deposit would be made by Paulding in said Merchants' National Bank, which would enable said bank to help Bayne & Co.

(Answer objected to.)

Q. Who of the firm of Bayne & Co. were in this city at that time?

A. I don't know of any but Bayne.

Q. Which Bayne?

A. Lawrence P. Bayne.

Q. State what was said to you by Bayne or Paulding as to the manner in which the funds to be drawn by Paulding were to be applied.

(Objected to as what was said by Paulding.)

64 A. I don't recollect of anything being said.

Q. Look at the paper now shown you, copy of which is herewith filed and marked "W. S. H. No. 3," and state whether that paper has any connection with or relation to the payment of the checks drawn by Paulding on your bank for $100,000 each, dated April 21st, 1866, and referred to in your foregoing answers; and, if so, what is the relation to or connection with said checks?

(Objected to.)

A. There is a statement in said paper that $50,000 had been deposited to the credit of Bayne & Co. with Scott, Capron & Co., & $50,000 with Hoit, Anthony, Douglas & Co., in accordance with my telegram as mentioned above.

Q. To whom was your telegram directing the deposit of $50,000 with Scott, Capron & Co., & $50,000 with Hoit, Anthony, Douglas & Co., to the credit Bayne & Co., addressed, and what reply did you receive to that telegram, if any?

A. It was addressed to Jay Cooke & Co., New York. And the reply was the letter above referred to.

Q. How came your bank to pay the checks drawn on it by Paulding, above referred to, in favor of the Merchants' National Bank, in the manner in which you have above indicated?

A. I do not know that the checks were payable to the order
65 of the Merchants' National Bank. I only know that they were presented by its cashier and paid, as above stated, in accordance with his specific directions.

Q. In whose handwriting is the letter marked "Exhibit W. S. H., No. 3," and the signature thereto?

A. The body of the letter is in the handwriting of one of the clerks of Jay Cooke & Co., who was formerly one of my own clerks. The signature is in the handwriting of H. C. Fahnestock, one of the firm of Jay Cooke & Co., with whose handwriting I am also perfectly familiar.

Adjourned till to-morrow (Friday) at 12 o'clock a. m., at the First National Bank.

Examination-in-chief of Mr. Huntington here closed.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to above, when the cross-examination was commenced.

On the 21st day of April, 1866, I was the cashier of the First National Bank. H. S. Flynt was assistant cashier at that time.

Q. On the 21st day of April, 1866, how much money was there in the 1st National Bank to the credit of Col. Paulding?

A. None; but there was a balance to the credit of Col. E. E.
66 Paulding, paymaster of the United States Army, amounting to two hundred and twenty-six thousand four hundred and forty-nine dollars and ninety-three cents.

Q. You state in your examination-in-chief that two checks for $100,000 each were presented to the First National Bank, for payment by the then cashier of the Merchants' National Bank. At what hour of the day were these checks presented?

A. I should think about ten o'clock in the morning.

Q. Where are these checks?

A. I don't know. They were delivered to Col. Paulding at the last statement of his account when it was settled. They are not now in the possession of the First National Bank.

Q. You say in your examination-in-chief that $50,000 was deposited by telegraph to Bayne & Co.'s credit, with Hoyt, Douglas, Anthony & Co., New York. How do you know this fact?

A. I only know that I ordered it to be done, and I received advice that it had been done.

Q. Have you the telegraphic draft?

A. No.

Q. Where is it?

A. It is in possession of the telegraph company, I suppose; I don't know.

67 Was this deposit with Hoit, Anthony, Douglas & Co. made at the same time the checks were presented?

A. The telegraphic dispatch ordering the deposit *were* made at that time.

Q. Were both checks presented at once, and did you see them presented?

A. The*re* were; and I did see them presented.

Q. You also say in your principal examination that $50,000 was deposited by telegraph to the credit of Bayne & Co., with Scott, Capron & Co., New York. Do you know this of your own knowledge?

A. I simply know that I sent the telegraphic dispatch ordering the deposit to be made, and I only received the advice that it had been made.

Q. Have you the telegraphic draft?

A. They were not drafts; it was merely an order; it was a telegraphic dispatch to Jay Cooke & Co. to deposit the money with the parties indicated, to the credit of Bayne & Co.

Q. Was this telegraphic order made at the same time the checks were presented?

A. It was.

Q. On what day was the balance of the $200,000 paid to Sherman in money?

A. The two checks were paid at the same time, in the way I have already stated.

68 Q. On what day did you call at the Merchants' National Bank to look into its condition?

A. On the 20th of April.

Q. How long were you in making the examination?

A. They simply presented me with a statement of their liabilities and assets, which I occupied about half an hour in examining.

Q. I think you testified in the examination-in-chief that after you called at the Merchants' Bank to see about its condition, your advice was asked in regard to the propriety of the transfer from the First National Bank to the Merchants' Bank. Who asked the advice?

A. Col. Paulding.

Q. Was it not to the pecuniary interest of the First National Bank that the funds of Paulding should remain there on deposit?

(Objected to.)

A. Certainly.

Q. Do you know of your own knowledge, or from what you have heard, that the Merchants' National Bank applied to Col. Paulding to transfer funds from the 1st National Bank to the Merchants' National Bank?

A. I had so understood it from Col. Paulding. Mr. Sherman and Col. Paulding both had spoken to me about the matter.

Q. On the evening of the day that you called at the Merchants' National Bank, you state that Mr. Bayne & some of the officers of the Merchants' National Bank called at your house. What are the names of these officers?

69 A. I do not now recollect. I think, however, both Mr. Huyck & Mr. Sherman, president and cashier, Mr. Boteler, the vice-president of the bank, called. I don't now recollect any others.

Q. Was it on the following morning that you declined to give your advice as to the propriety of the transfer?

A. It was.

Q. To whom did you decline to give your advice?

A. To Col. Paulding.

Q. Are you certain that Mr. Bayne stated during the interview at your house that if he could get immediate help he would be saved from failure?

A. I so understood him.

Q. But you are not certain that you so understood him?

A. Pretty certain.

Q. Did he then or at any time state to you or in your hearing that he expected to get some help from the fund about to be transferred to the Merchants' National Bank by Paulding, or do you know of your own knowledge that before the transfer or presentation of the checks, testified to by you in your examination-in-chief, he expected to get the whole or any part of the $200,000 transferred?

A. I did not know of my own knowledge, only I obtained the impression from the general talk that he expected to get some help.

70 Q. Did he then or at any time state to you or in your hearing that he expected to get some help from the funds about to be transferred to the Merchants' National Bank by Paulding?

A. I can't say that he did, but at the same time I got the impression that he did expect to get some help.

Q. Do you know Lawrence P. Bayne?

A. I never saw but one Mr. Bayne, and I believe his name is Lawrence P. Bayne.

Q. Was it William Bayne or Lawrence P. Bayne?

A. I never saw William Bayne to my knowledge.

Q. From whom did you get the impression that Bayne expected help?

A. That impression was obtained from a general conversation that evening at my house.

Q. But you don't know who said it?

A. I think Mr. Bayne alluded to its importance. I know in fact that Mr. Bayne stated that if could receive some help immediately he would be saved from failure.

Redirect:

Q. Produce the books of the 1st National Bank in which are contained its account with Jay Cooke & Co. of New York, running through the month of April, 1866, and state whether or not on said books

71 of the 1st National Bank Jay Cooke & Co. were credited with the amounts they advised you had been placed with Hoit, Anthony & Douglass, and with Scott, Capron & Co., to the credit of Bayne & Co., on the 21st day of April, 1866.

(Objected to.)

A. I now produce the original book of the bank containing the accounts called for in the question, and find upon examining the same the following entries: "April 21st, deposited, Hoyt, Anthony, Douglass & Co., $50,000; same date, Scott, Capron & Co., $50,000. These entries are in the account with Jay Cooke & Co., and are entered as credits] therein.

Q. State whether or not you know the handwriting in which said entries are made; and state in whose handwriting they are, and whether they were made on the day they bear date.

(Objected to.)

A. I know the handwriting, & it is that of Mr. D. S. Ward, principal book-keeper at the bank at that time. The entries were made on the day they purport to have been made. The account of Jay Cooke & Co. covers so me thirty pages of said book. (The complainant here hands the books to the counsel for defendants for his inspection and examination.

Complainant here closes with this witness.

W. S. HUNTINGTON.

72 Sworn to and subscribed before me this 17th day of December, A. D. 1869.

Adjourned till Monday, the 20th of December, 1869, at 12 m.

J. JOHNSON, *Exam'r.*

Met pursuant to above. Present, Mr. Merrick for complainant, and

Mr. Washington for defendants; when DAVID RITTENHOUSE, being duly sworn, deposes and says:

My name is David Rittenhouse. I am book-keeper in the First National Bank.

Q. Look at the paper now handed to you, marked "Exhibit W. S. H., No. 1," and state whether you made out said paper, and from what you made the same, and if from any books of the First National Bank, produce the same before the examiner for the inspection of counsel for defendants.

A. I made out the paper marked "Exhibit W. S. H., No. 1." It is in my handwriting. It is a true copy from the ledger of the First National Bank of the account of Maj. E. E. Paulding, chief p. m. I now produce the original book from which said copy was made, the said book being labelled "Individual ledger B, First National Bank of Washington, D. C."

Adjourned till January 3, 1870.

J. J. JOHNSON,
Examiner in Chancery.

73 Met pursuant to above; when the examination-in-chief of David Rittenhouse was resumed, as follows:

Q. State what the letters "P. M." mean after the words "maj. and chief."

A. Abbreviation for paymaster.

(The books of the bank were here presented to counsel for defendants for his inspection.)

Cross-examined by Mr. Washington for defendants:

Q. State on what pages of the individual ledger is the exhibit marked W. S. H., No. 1, copied from.

A. Pages 272 and 273.

Q. Why is this book labelled individual ledger B?

A. Because accounts of individual depositors are kept in it.

Q. Do you k*ept* the account of the mon*ies* of the United States in separate books from those belonging to individual depositors?

A. The account of disbursing officers are kept in the individual ledger, and the account with the Treasurer of the United States is kept in the general ledger.

Q. All the entries in the individual ledger are posted from the journal entries, are they not?

A. They are.

Q. The account of E. E. Paulding in the individual ledger, then,
74 is made up exclusively of entries posted from the journal?

A. It is, so far as I know. I did not make the entries; but that is the manner in which the books are kept.

Q. In the copy of the account there are two checks charged to Col. Paulding, amounting in the aggregate to $200,000; in the column opposite the date of payment, namely, April 21st, 1866, there is the No. 252; to what does this number refer?

A. It refers to the page of the journal from which that entry is posted. (The witness here produces the book marked "Individual journal 4.")

Q. Look at the journal entry on page 252 and say from what entries therein the entry above referred to in the account filed dated April 21st, 1866, was made.

A. Made up of two checks appearing therein, as follows: $100,000 each, under date of April 21st, 1866.

Q. It appears from the entry on page 252 that E. E. Paulding is charged with $100,000, and that the page of ledger 272 is referred to in the margin. Does it appear from the entry in the journal that this money was charged to E. E. Paulding in his official capacity?

A. So far as I know, the check was charged to him as paymaster. On the journal, at page 252, it appears charged to E. E. Paulding
75 without any designation. There also appears under the same date of April 21st, 1866, upon the journal another entry for $100,000 against Paulding charged in the same manner.

Q. Who made the entries to which you have testified in the ledger and journal?

A. I do not know. I did not make any of them, nor were I bookkeeper at that time.

Redirect:

Q. State whether or not E. E. Paulding has any other account than that of paymaster, or had any such in 1866.

A. I was not in the bank at that time; I do not know.

D. RITTENHOUSE.

Sworn to and subscribed before me this 3rd day of January, 1870.

J. J. JOHNSON,
Exam'r in Chancery.

Adjourned till Tuesday the 4th inst., at 10 o'clock a. m.

J. J. JOHNSON,
Exam'r in Chancery.

Met pursuant to above; when CHARLES A. SHERMAN was duly sworn, deposes, and says:

My name is Charles A. Sherman. I reside now in Montgomery
76 Co., Maryland. I was cashier of the Merchants' National Bank, of this city, in 1866 and part of 1865.

(Counsel for defendant requires that this examination be by interrogatories.)

Q. What do you know of the settlement under which and the object for which a check for $200,000 was drawn by Col. E. Paulding, paymaster of the United States Army, dated 21st April, 1866, in favor of the Merchants' National Bank of Washington, or any officers thereof?

(Objected to.)

A. The Merchants' National Bank, at the date of the check, and for a time prior thereto, was in want of currency, and it was suggested to the president and cashier of the bank that Col. Paulding had monies, funds, or currency to his credit as a disbursing officer of the Government, a portion of which might be transferred to the Merchants' National Bank, provided the consent of Col. Paulding and the First National Bank could be had thereto. With that view several persons met at the house or residence of the cashier of the First National Bank, the persons being Mr. Oscar King, Charles W. Boteler, Lawrence P. Bayne, and myself, Mr. Bayne having made representations that with the aid of $100,000 he would be enabled to relieve his banking firm from certain embarrassments, and made quite a detailed statement of his affairs, or of the affairs of his bank, in order to satisfy the cashier of the First National Bank that such aid would relieve his bank. After such
77 statement had been made, the cashier of said First National Bank expressed himself satisfied, and that he would consent to a transfer of currency being made by said Paulding to said Merchants'

National Bank. On the following morning Mr. King and myself called upon Mr. Huntington, and on our way to his office met Mr. Huntington, who said he would then see Col. Paulding in reference to the transfer being made, and would meet us in a few minutes thereafter at his office. In a short time after reaching his office, Mr. Huntington came in and said that Col. Paulding would be there presently. Col. Paulding came and had a conversation with Mr. Huntington, and, as Paulding left, Huntington turned to me and said a transfer would be made. Paulding immediately returned, had a moment's further conversation with Huntington, when the latter said to me, "Go to Paulding's office," (Mr. Washington objects to this conversation,) "and he will give you a check for $200,000." Mr. King and myself went to Paulding's office, when he made out a check, and handed the same with his bank-book to his clerk or messenger to deposit the same in the Merchants' National Bank. The deposit was made, and the check taken by me to the First National Bank with a memoranda, handed me by Mr. King, showing how and to whom Mr. Bayne desired the $100,000 he was to receive was to
78 be paid. I met Mr. Huntington at the street-door of his bank, showed him the check and memoranda, the latter of which he took, and I drew the remaining $100,000 in currency and proceeded to the Merchants' National Bank. On reaching the bank, Mr. King and Mr. Boteler were in conversation, when they said to me that Mr. Bayne must have, as requested by him, $50,000 more; to which I objected. Mr. King said, "Wait a moment and I will telegraph Mr. Bayne." He went out and soon returned, saying he had telegraphed Mr. Bayne, and that that the latter's reply was, that he must have it, and could not get along without it. Mr. King that afternoon took $50,000 in currency, to be delivered to Mr. Bayne. The teller or book-keeper of the Merchants' National Bank fixed it up for him.

Q. State what caused the Merchants' National Bank to be short of currency.

(Objected to.)

A. The bank having a large deposit to its credit with the firm of Bayne & Co. on call, and their inability to supply the Merchants' National Bank with currency as desired, and as understood they would do when wanted.

Q. You have stated that Lawrence P. Bayne was present at the meeting at Huntington's house; state why he was present, and what object and interest and what part he took in said interview.

79 A. That he might make a representation to Mr. Huntington as to the affairs of his firm, and to ascertain from said representations whether it would be advisable to extend the aid he desired. Mr. Huntington desired him to make a statement of his affairs with the firm, which he did, and answered numerous questions propounded to him by Mr. Huntington, the entire conversation being in the main between Mr. Bayne and Mr. Huntington.

Q. What statement was made by any person, and by whom, to said Paulding or said Huntington, touching the appropriation of any part of the proceeds of his said check for $200,000, and how the same was to be distributed and applied?

A. I don't know that any conversation was held other than by my presenting a memoranda handed me by Mr. King, and which he said was given to him by Mr. Bayne that morning, at the time I delivered the same to Mr. Huntington, when I simply said, "Mr. Huntington, here is a memoranda from Mr. Bayne, showing to whom he wanted the $100,000 to be deposited with in New York City." I don't know that any con

versation occurred with Paulding, as there was no one present but Huntington and myself.

Q. State whether you produced this memoranda to Huntington before or after Paulding's check was paid.

80 A. Some two or three minutes before.

Q. State whether you received, as cashier of said Merchants' National Bank, the whole proceeds of said check; and if any part thereof was not received by you, state in whose hands it was left, and for what purpose.

A. I did not receive the whole $200,000. At the time of handing the memorandum to Mr. Huntington, I stated that Mr. Bayne desired the $100,000 to be deposited with two banking firms in New York City, $50,000 each, by telegram. He said, all right.

Q. Look at the paper shown you now, marked "W. S. H., No. 2," and state what you know of the consideration for which the same was executed, to whom it was delivered, and what became of it, & especially what connection it had with the proceeds of said check for $200,000.

(Objected to.)

A. I am inclined to think, so long a time having elapsed, that the draft in question was given me as part payment of the 10,000. My recollection now serves me, since seeing this draft No. 21226, that the said draft was given to Mr. King to be delivered to Mr. Bayne, instead of currency, as before stated by me, there being some conversation as to whether he should take the currency or the draft.

Q. Please state what you know of the signatures on said paper marked "Exhibit W. S. H., 2," and endorsed thereon, & in whose

81 writing they respectively are.

A. The draft is signed in the handwriting of H. S. Flynt, assistant cashier of the First National Bank, to my order, & by me endorsed, and thereafter, as I believe, by Bayne & Co. I believe it to be the signature of Bayne & Co.

Q. As the original paper now shown you is required to be returned to the First National Bank of Washington, will you please make a correct copy thereof, with the endorsements, and annex the same as a part of your answer?

A. I have examined the copy of the original draft, No. 21226, and marked "W. S. H., No. 2," and find it to be a correct copy of the original, and herewith attach the same to my testimony.

Q. State what you know touching the understanding of Lawrence P. Bayne, Oscar King, Mr. Huntington, and yourself, in obtaining said check being to sustain the Merchants' Bank by appropriating $150,000 of the proceeds of the said check to sustain the firm of Bayne & Co., who were largely indebted, as stated by you, to your bank, and by appropriating the remaining $50,000 of the proceeds of said check to the use of the Merchants' National Bank.

(Objected to as leading.)

A. The object in obtaining the transfer was understood by us

82 all to be twofold: the aiding of Bayne & Co. and the Merchants' National Bank.

Q. How long after the 21st of April, 1866, was it that the Merchants' National Bank suspended payment and went into liquidation?

A. The 3rd or 4th of May following, the bank closed business, and passed into the hands of the receiver, as near as I can recollect, about two weeks after closing.

Q. From your knowledge of the condition of said bank, since ob-

tained, state what was its financial condition on the 21st of April, 1866.
(Objected to.)
A. The bank was at that time in an embarrassed condition—in the want of funds or currency—and its solvency, in a great measure, depended on the ability of Bayne & Co. to meet its obligations to the said bank.
Q. How long after the 21st of April, 1866, was it that Bayne & Co. failed?
A. A few days after the closing of the Merchants' National Bank, is my recollection now serves me.
Examination-in-chief closes.

Cross-examined by Mr. Washington:
Q. Who was the president of the Merchants' National Bank in 1866?
A. Leonard Huyck.
83 Q. Was it necessary for Col. Paulding to get the consent of the First National Bank in order to enable him to draw out any funds?
A. I don't know that it was.
Q. At w'at time was the meeting at the residence of the cashier of the First National Bank, referred to in your examination-in-chief, held?
A. On the evening of the 20th of April, 1866.
Q. To whom did Mr. Bayne make the representation that with the aid of $100,000 he would be enabled to relieve his banking firm from embarrassment before the evening of the meeting?
(Objected to.)
A. To myself.
Q. If Col. Paulding chose to withdraw any money to his credit from the First National Bank, was it not the duty of the First National Bank to pay the money over under his order?
(Objected to.)
A. It was, unless notified to the contrary by the Secretary of the Treasury or the Treasurer of the United States or the Secretary of War.
Q. Was the check on the First National Bank drawn by Paulding for $200,000?
(Objected to.)
A. It was.
Q. Was there more than one check?
(Objected to.)
A. I think not.
84 Q. Do you know how this check for $200,000, handed to you by Paulding, was signed?
(Objected to.)
A. My impression is, E. E. Paulding, addl. paymaster, U. S. Army.
Q. What were the relations subsisting between the Merchants' National Bank and Bayne & Co.? Did Bayne & Co. owe money to the Merchants' National Bank at the time and antecedent to the obtaining of the check from Paulding?
(Objected to.)
A. They did.
Q. Did you receive any portion of the proceeds of the $200,000 check, and deposited it in the Merchants' National Bank?
(Objected to.)
A. I did.
Q. How much?
(Objected to.)

A. $100,000.
Q. Was any of this $100,000 subsequently lent to Bayne & Co.?
(Objected to.)
A. It was.
Q. How much?
(Objected to.)
A. $50,000.

Q. How was it paid?

85 (Objected to.)

A. By a draft of the First National Bank of Washington, D. C., on the Central National Bank of New York.

Q. State in what shape the $100,000 was paid to you by the First National Bank, and what you did with the money.
(Objected to.)
A. Since seeing the draft this morning, I believe $50,000 was paid to me in currency, the remaining $50,000 by a draft of the First National Bank of Washington, D. C., on the Central National Bank, New York. I regarded the draft the same as cash. I then went to the Merchants' National Bank and deposited the $50,000 currency and the draft for $50,000.

Q. After the deposit was made, did you let Bayne & Co. have any money?
(Objected to.)
A. Against my consent, but under the request of the vice-president of the bank and Oscar King, director, $50,000 was sent by Mr. King to Bayne & Co., in a draft of the First National Bank of Washington, D. C., on the Central National Bank of New York.

Q. Did the $50,000 currency paid you by the First National Bank go into the general fund of the Merchants' National Bank?
(Objected to.)

A. Yes, sir.

86 Q. Was the financial condition of the Merchants' National Bank on the 21st of April, 1866, and prior thereto, believed by you at that time to be good?
(Objected to.)
A. The bank was embarrassed at that time and for a short time prior thereto, and its ultimate solvency depended on the ability of Bayne & Co. to meet its obligations to the Merchants' National Bank.
Question repeated.
(Objected to.)
A. I give the same answer.
Question repeated.
(Objected to.)
A. I did believe the bank then to be good, provided Bayne & Co. met their obligations to the Merchants' National Bank.

Q. Did the deposit of the money held by Paulding in your bank allow you to increase the credit of the bank?
(Objected to.)
A. No, sir; we were not allowed to issue any more notes.

Adjourned till to-morrow the 5th inst., at the office of R. J. Brent, at 10 o'clock p. m.

J. J. JOHNSON,
Exam'r.

87 Met pursuant to above; when the cross-examination was resumed by counsel for defendants:

Q. Did the Merchants' National Bank at any time lend money to Bayne & Co.?

A. Yes, sir.

Q. I suppose the transactions between the Merchants' National Bank and Bayne & Co. will appear from the books of the bank?

A. Yes, sir.

Q. Where are those books?

A. I don't know, sir.

Q. Where are they, or where ought they to be?

A. The receiver, I suppose, has control over them.

Q. Do you know how much was due from Bayne & Co. to the Merchants' National Bank on the 21st April, 1866?

A. Over six hundred thousand dollars.

Q. You say in your examination-in-chief that a receiver was appointed for the Merchants' National Bank; what is the name of the receiver?

A. James C. Kennedy.

Q. Do you know whether this suit is instituted for the benefit or at the instance of James C. Kennedy, the receiver of the Merchants' National Bank.

(Objected to.)

A. I do not.

Q. What is your belief on the subject?

(Objected to.)

88 A. My belief is it is for the benefit of those whom he represents. I don't know who brought this suit myself.

Q. Was the money obtained on the Paulding check & deposited in the Merchants' National Bank a special deposit?

A. No, sir.

Q. Had the Merchants' National Bank the right to use the monies deposited there that were not a special deposit?

(Objected to.)

A. Yes, sir. Every bank in the United States does it.

Cross-examination closed.

Redirect:

Q. How much was the Merchants' National Bank indebted to the United States at the time it closed?

(Objected to on the ground that it is irrelevant, leading, and is not appropriate mode of proving the fact.)

A. Several hundred thousand dollars.

(Answer objected to.)

Q. In your cross-examination you have answered, in reply to an interrogatory inquiring whether Bayne & Co. owed money to the Merchants' National Bank at the time and antecedent to the obtaining of the check from Paulding, that they did; state how much or about how much Bayne & Co. owed the Merchants' National Bank at the time said check was so obtained.

89

A. About five hundred thousand dollars.

C. A. SHERMAN.

Sworn to and subscribed before me this 5th day of January, A. D. 1870.

J. J. JOHNSON,
Exam'r.

Adjourned till Saturday, the 8th day of January, 1870, at 3 o'clock p. m.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to adjournment. Present, Mr. Merrick for complainant and Mr. Washington for defendants.

WILLIAM S. HUNTINGTON recalled by the complainant, who deposes, testifies, and says as follows:

Q. Look at the certificate from John Allison, Register of the Treasury of the United States, and the drafts thereto attached, (which drafts
90 and certificates are marked "Exhibit R. J. B. No. 1," and filed with the examiner as proofs in the case,) and state whether you have compared such of said drafts as appear to have been drawn on the First National Bank of Washington City, D. C., with the originals in the Treasury Department, and whether you recognize and identify said original drafts.

(Objected to on the ground that it is not responsive to the cross-examination, and the examination-in-chief is closed. It is leading. It is not the best or appropriate instrument of proof, & that there is no paper in evidence marked "R. J. B. No. 1.")

A. I have compared said drafts with the originals and do state that they are correct copies of each one.

Q. Do you know the handwriting of Paulding, & what opportunities you had of knowing his handwriting?

(Question objected to for the reasons above stated.)

A. Yes, I am very familiar with it. He did business for a long time at our bank, and I necessarily became acquainted with it.

Q. State whether the endorsements of the name of E. E. Paulding, on the drafts examined by you, as stated in your reply to the last interrogatory, and drawn by Mr. Spinner in his favor on the First National Bank, are in said Paulding's handwriting.

91 (Objected to for reasons above stated.)

A. They are.

Q. State what disposition was made by Paulding of said drafts so drawn by Spinner in his favor on the First National Bank; and if the same were endorsed by him to your bank, that is the First National Bank, and paid by that bank, and to whom the proceeds were credited.

(Question objected to for the reasons stated above.)

A. The proceeds were credited to E. E. Paulding, paymaster of the United States Army.

(Answer objected to.)

Q. Did E. E. Paulding keep any other account at the First National Bank in April, 1866, or at any time during that year, than his account as paymaster of the United States Army?

(Objected to for the reasons stated above.)

A. He did not.

Q. State what account he kept in that year at the First National Bank, and whether it was an official or private account.

(Objected to for the reasons above stated.)

A. He kept an account as paymaster of the United States Army. That was the only account he kept at the First National Bank.

A. It appears from the books of the bank that on the 21st of
92 April, 1866, E. E. Paulding drew a check on the bank for $5,000 which was honored by the bank & which was not carried to his

official account, but to an account on the books entitled "sundry accounts;" explain this transaction.

(Objected to for the reasons above stated.)

A. I don't know that the books of the bank show that a check was drawn for $5,000. There is a charge against him on the 21st of April, 1866, under "sundry accounts" of $5,000, which amount it appears that he returned to the bank nine days after, to wit, on the 30th day of April, 1866.

Cross-examined by Mr. Washington:

Q. Did the money that was placed to the credit of Paulding as paymaster go in the general fund of the First National Bank?

A. Certainly.

W. S. HUNTINGTON.

Adjourned till Wednesday, the 12th inst., at 3 o'clock p. m., at Mr. Merrick's office.

J. J. JOHNSON,
Examiner in Chancery.

93 Met pursuant to above; when the witness, William S. Huntington, signed the foregoing deposition in my presence and before me, the same having been read over to him, this 12th day of January, 1870.

J. J. JOHNSON,
Examiner.

Adjourned till Friday, the 14th inst., at 3 o'clock p. m., at the office of R. T. Merrick, esq.

Met pursuant to above, and adjourned to meet upon notice being served by complainant's attorney upon defendants' attorney.

J. J. JOHNSON,
Examiner.

And to wit, on the 3rd day of March, 1870, met pursuant to agreement.

Present: On behalf of the defendants Messrs. Davidge & Washington, and Mr. Merrick for complainant.

WILLIAM S. HUNTINGTON, being recalled on the part of the complainant, deposes and says as follows:

I am cashier of the First National Bank, Washington, D. C.

Q. State whether or not you have been able to find the two checks of E. E. Paulding, on the First National Bank, of April 21st, 1866,
94 for one hundred thousand dollars each, in regard to which you have testified in your previous examination.

A. Yes, sir; I found them in the bank laid away with a lot of old cancelled checks. I now produce them and hand them to commissioner.

(Which said checks are herewith filed and marked "Exhibits I I I No. 1," and "I I I No. 2.")

Q. State whether or not you are familiar with the handwriting of E. E. Paulding, and whether you have ever seen him write, and what have been your opportunities of knowing his handwriting.

A. I am well acquainted with his handwriting. He did business here

at the bank for a long time, and I necessarily became acquainted with his handwriting.

Q. Look at the checks handed to the commissioner by you, and marked "I I I No. 1" and "I I I No. 2," and state in whose handwriting are the signatures thereto and the endorsements thereon.

A. The signatures and the endorsements are in the handwriting of E. E. Paulding.

Q. State what disposition was made by your bank of the proceeds of said checks or to whom the same was paid.

A. The same disposition as stated in my testimony heretofore taken in this cause, these being the two checks referred to by me in my examination heretofore had.

W. S. HUNTINGTON.

95 Sworn to and subscribed before me this 3rd day of March, 1870.

JOHN J. JOHNSON,
Examiner in Chancery.

The counsel for complainant directs the examiner to close said commission this 3rd day of March, 1870.

JOHN J. JOHNSON,
Examr. in Chancery.

UNITED STATES
v.
RIDDLE & AL., TRUSTEES OF BAYNE & AL.

Please take notice that the complainant in this cause desires the evidence to be adduced in this cause to be taken orally, and will proceed to examine such witnesses on the part of the complainant before me on Thursday, the 28th Oct., 1869, at 12 m., at my office, No. 389 D strt., as may then and there, or at any adjournment thereof, be produced. At which time and place you are hereby notified to attend and cross-examine said witnesses if you shall see fit.

J. J. JOHNSON,
Examr. in Chancery.

To W. D. DAVIDGE,
For Defts.

96 (In lead-pencil:)

Service acknowledged Oct. 25, '69.

W. D. DAVIDGE.

I further certify that the foregoing depositions of William S. Huntington, David Rittenhouse, and Charles A. Sherman were then and there reduced to writing by me in the presence of the deponents, and to them by me carefully read over, and by them subscribed in my presence after having been so reduced to writing.

I further certify that I am not of counsel or attorney to either of the parties to this suit, nor interested in the event of this cause.

I further certify that it being impracticable for me to deliver said depositions with my own hands into the court for which it was taken, I retained the same for the purpose of being sealed up by me until the same was mailed by me to the court for which it was taken, and to remain under my seal until opened.

I further certify that the fee for taking the said depositions, amount-

ing to one hundred and seventy-five dollars, has been paid to me by the complainant, and that the same is just and reasonable for the services performed.

Given under my hand and seal, at the city of Washington, District of Columbia, this 3rd day of March, 1870.

JOHN J. JOHNSON, [SEAL.]
Examiner in Chancery for the District of Columbia.

97 The exhibits referred to in the foregoing depositions are as follows, to wit:

EXHIBIT W. S. H., No. 1.—*J. J. Johnson, Exr.*

E. E. Paulding, Maj. and Chief P. M.

	21	120	1 check.....	25,000	Dec. 19	.....	By balance....	359,555
					1866.			
	22	130	1 "	25,000	Jan. 5	195	Cash 2	4,316 42
1866								
Jan'y	4	188	1 "	25,000	" 25	283	"	50,000
	5	194	1 "	22,000	Feb'y 7	353	"	390,000
	13	232	1 "	20,000	" 24	429	"	2,122 54
	15	238	1 "	25,000	Mch. 6	517	"	300,000
	18	254	1 "	30,000	" 27	H23	"	455 97
	22	268	1 "	15,000				
	26	288	1 "	30,000				
	29	296	1 "	20,000				
	30	302	1 "	10,000				
Feb'y	1	318	1 "	20,000				
	5	340	1 "	20,000				
	9	354	2 "	90,000				
	13	378	1 "	50,000				
	16	392	1 "	3,000				
	23	424	1 "	50,000				
	26	436	2 "	65,000				
	27	446	1 "	15,000				
	28	466	1 "	25,000				
98	Mch. 1	470	2 "	45,000				
	2	482	1 "	20,000				
	6	518	3 "	70,000				
	7	526	1 "	30,000				
	8	542	1 "	15,000				
	9	546	1 "	25,000				
	10	554	1 "	10,000				
	12	562	1 "	25,000				
	14	588	1 "	30,000				
	16	602	1 "	30,000				
	17	616	2 "	30,000				
	21	634	1 "	20,000				
	27	H22	1 "	20,000				
			Forward....	$955,000			Forw'd.....	$1,106,449 93

E. E. PAULDING, *Lt. Col. and Chief Paym.*

1866.		H	Forward	$955,000			Forward	1,106,449 93
Mch.	28	34	To 2 checks...	30,000	Ap'l 13	189	By cash.....	200 000
	29	44	1 " ...	15,000				
	31	76	1 " ...	20,000				
Apr'l	2	84	1 " ...	20,000				
	11	170	1 " ...	10,000				
	13	594	1 " ...	30,000				
	21	252	2 " ...	200,000				
99	May 2	338	1 " ...	10,000				
	5	362	1 " ...	16,449 93				
				$1,306,449 93				$1,306,449 93

EXHIBIT W. S. H. No. 2.

A true copy: W. S. HUNTINGTON.

No. 21226. [2c. U. S. rev. stamp, cancelled.]

FIRST NATIONAL BANK OF WASHINGTON,
Washington, D. C., April 21st, 1866.

Pay to the order of C. A. Sherman, esq., cash., fifty thousand ⅌100 dollars.

$50,000.

To the CENTRAL NATIONAL BANK,
New York.

(Signed) H. S. FLYNT, *A. Cashier.*

(Endorsed:) C. A. Sherman, cash'r. Bayne & Co., pay to the order of H. W. Ford, cashier. R. Mickle, cas. P'r Snow.

EXHIBIT W. S. H. No. 3.

BANKING-HOUSE OF JAY COOKE & CO.,
CORNER WALL AND NASSAU STREETS,
New York, April 21, 1866.

WM. S. HUNTINGTON, Esq., *cash.*

100 D'R SIR: We have bo't of you to-day 100 M 7.30 M 101⅞, and credit your account $104,415, as per slip herein.

Have deposited for credit of Bayne & Co. with Scott, Capron & Co	50,000
Hoyt, Anthony, Douglass & Co	50,000
And charged your acc't	$100,000

Y'rs,

JAY COOKE & CO.

EXHIBIT J. J. J. No. 1.

No. 516. [Stamp.]

WASHINGTON, *April 21st*, 1866.

Government depository and financial agent of the United States.

The First National Bank of Washington pay to Brt. Lt. Col. E. E. Paulding, A. P. M. U. S. A., or order, one hundred thousand dollars.

$100,000 ⅌. EDW'D E. PAULDING,
Paymaster, U. S. A.

(Endorsed:) Edw'd E. Paulding, paymaster U. S. A.

EXHIBIT J. J. J. No. 2.

No. 517. [Stamp.]

WASHINGTON, *April 21st*, 1866.

Government depository and financial agent of the United States.

The First National Bank of Washington pay to Br't Lt. Col. E. E. Paulding, A. P. M. U. S. A., or order, one hundred thousand dollars.

101 $100,000 ⅌ EDW'D E. PAULDING,
Paymaster U. S. A.

(Endorsed:) Edw'd E. Paulding, paymaster U. S. A.

EXHIBIT R. J. B. No. 1.

TREASURY DEPARTMENT,
Register's Office, November 10th, 1869.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys," I, John Allison, Register of the Treasury Department, do hereby certify that the annexed copies of war warrants, with drafts attached, issued to Br't Lt. Col. E. E. Paulding, additional paymaster U. S. Army, are true copies of the originals on file in this office.

JOHN ALLISON,
Register.

Be it remembered that John Allison, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

102 In testimony whereof, I, George S. Boutwell, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this Department, at the city of Washington, this tenth day of November, in the year of our Lord 1869.

[SEAL.] GEO. S. BOUTWELL,
Secretary of the Treasury.

Draft No. 6424 *on war warrant No.* 6204. Ph. E. O. G.

$500,000. TREASURY OF THE UNITED STATES, H. R.
Washington, Oct. 11th, 1865.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l paymaster, five hundred thousand dollars.

Issued on requisition No. 2141.

$500,000. (Signed) S. BARRY,
Acting Treasurer of the United States.

No. 6424. Registered Oct. 11, 1865.
(Signed) S. B. COLBY,
Register of the Treasury.

To the First National Bank of Washington, D. C.

(Endorsed:) Place to my credit. (Signed) Edw'd E. Paulding, paymaster U. S. A.

Draft No. 6425 *on war warrant No.* 6204. Ph. E. O. G.

$250,000 ⁄. TREASURY OF THE UNITED STATES, H. R.
Washington, Oct. 11th 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paymaster, two hundred fifty thousand dollars.

103 Issued on requisition No. 2141.

$250,000. (Signed) S. BARRY,
Acting Treasurer of the United States.

No. 6425. Registered Oct. 11, 1865.
(Signed) S. B. COLBY,
Register of the Treasury.

To the National Bank of the Metropolis, Washington, D. C.

(Endorsed:) Place to my credit. (Signed) Edw'd E. Paulding, paymaster U. S. A.

Draft No. 6426 *on war warrant No.* 6204. Pt. E. O. G.

$250,000.] TREASURY OF THE UNITED STATES, [H. R.
Washington, Oct. 11th, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paym., two hundred fifty thousand dollars.

Issued on requisition No. 2141.

(Signed) S. BARRY,
Acting Treasurer of the United States.

No. 6426. Registered Oct. 11, 1865.
$25.000. (Signed) S. B. COLBY,
Register of the Treasury.

To the Merchants' National Bank of Washington, D. C.

(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A.

104 Treasury Department to the Treasurer of the United States, greeting:

War warrant No. 6204. Appropriation. Pay of 2 & 3 years' volunteers, &c.

Pay to Brt. Lt. Col. E. E. Paulding, additional paymaster, present, or order, out of the appropriation named in the margin, one million dollars, and for which sum he is to be charged and held accountable. Pursuant to requisition No. 2141, of the Secretary of War dated 5 June, 1865, countersigned by the Second Comptroller of the Treasury, and registered by the Second Auditor. And for so doing this shall be your warrant.

E. W. H.
I. H. S.
R. & E. 10.
$1,000,000.

Given under my hand and the seal of the Treasury this 10th day of October, in the year one thousand eight hundred and sixty-five, and of Independence the 90th.

WM. E. CHANDLER,
Acting Secretary of the Treasury.

E. A. C.

Countersigned:
R. W. TAYLER,
Comptroller.

Recorded 10.
J. A. GRAHAM,
Asst. Register.

105 Received for the above warrant the following draft:

No. 6424 on 1st Washington	.....	$500,000
6425 " Metropolis do	.....	250,000
6426 " Merchants' do	.....	250,000
		1,000,000

Draft No. 6612 *on war warrant No.* 6549, *Pt.* [E. O. G.

0,000$50⁄. TREASURY OF THE UNITED STATES, [J. L. P.
Washington, Nov. 11*th*, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paym'r, five hundred thousand dollars.

Issued on requisition No. 3095.

(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6612. Registered Nov. 11, 1865.
$500,000. (Signed) S. B. COLBY,
Register of the Treasury.

To the First National Bank, Washington, D. C.

(Endorsed:) For deposit to my credit in public account in the First National Bank, Washington, D. C. (Signed) Edw'd E. Paulding, paymaster U. S. A.

Draft No. 6613 *on war warrant No.* 6549 *Pt.* [E. O. G.

$200,000.] TREASURY OF THE UNITED STATES,
Washington, Nov. 11*th*, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paym'r, two hundred thousand dollars.

Issued on requisition No. 3095.

106 (Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6613. Registered Nov. 11, 1865.
$200,000.] (Signed) S. B. COLBY,
Register of the Treasury.

To the National Bank of the Metropolis, Washington.

(Endorsed:) For deposit to my credit in public a⁄c in the National Bank of Metropolis, Washington, D. C. (Signed) Edw'd E. Paulding, paymaster U. S. A.

Draft No. 6614 *on war warrant No.* 6549, *Pt.* [E. O. G.

$300,000.] TREASURY OF THE UNITED STATES, [J. L. P.
Washington, Nov. 11*th*, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paym'r, three hundred thousand dollars.

Issued on requisition No. 3095.

(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6614. Registered Nov. 11, 1865.
$300,000⁄. (Signed) S. B. COLBY,
Register of the Treasury.

To the Merchants' National Bank of Washington, D. C.

(Endorsed:) For deposit to my credit in the Merchants' National Bank, Washington, D. C., in public a⁄c. (Signed) Edw'd E. Paulding, paymaster U. S. A.

Treasury Department to the Treasurer of the United States, greeting:

107 Pay to Brt. Lt. Col. E. E. Paulding, additional paymaster U. S. A., present, or order, out of the appropriation named in the margin, one million dollars, and for which sum he is to be charged and held accountable, pursuant to requisition No. 3095, of the Secretary of War, dated October 19, 1862, countersigned by the Second Comptroller of the Treasury, and registered by the Second Auditor; and for so doing this shall be your warrant.

War warrant No. 6549. Appropriation. Pay of 2 & 3 years' volunteers, &c. E. W. H. J. H. J. $1,000,000. R. & E. 10. D. R. B. N.

Given under my hand and the seal of the Treasury this 10 day of November, in the year one thonsand eight hundred and sixty-five, and of Independence the 90.

[SEAL.] WM. E. CHANDLER,
Acting Secretary of the Treasury.

Countersigned:
R. W. TAYLER,
Comptroller.

Recorded 10.
J. A. GRAHAM,
Asst. Register.

Received for the above warrant the following draft:

No. 6612, on 1st N. B., Washington			$500,000
No. 6613, on Metropolis	do		200,000
108 " 6614, " Merchants'	do		300,000
			$1,000,000

Draft No. 6737 on war warrant No. 6848, Pt. [E. O. G.

$50,000⅌.] TREASURY OF THE UNITED STATES, [H.R.
Washington, Dec. 16th, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paymaster U. S. A., fifty thousand dollars.

Issued on requisition No. 3096.
(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6737, registered Dec. 16, 1865.

$50,000=. (Signed) S. B. COLBY,
Register of the Treasury.

To the First National Bank of Richmond, Va.

(Endorsed:) Pay to Maj. G. W. De Costa. (Signed) E l'd E. Paulding, paymaster U. S. A. Pay to Lt. Col. D. Gribben, paym. U. S. A. (Signed) Geo. W. De Costa, P. M. U. S. A. (Signed) David Gribben, paym. U. S. A. S. A. Glover, cas.

Draft No. 6738 on war warrant No. 6848, Pt. [E. O. G.

$50,000.] TREASURY OF THE UNITED STATES, [H. R.
Washington, Decr. 16th, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paymaster, U. S. A., fifty thousand dollars.
Issued on requisition No. 3096.
(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6738. Registered Decr. 16, 1865.
$50,000. (Signed) S. B. COLBY,
Register of the Treasury.
109 To National Bank of Virginia, Richmond, Va.

(Endorsed:) Pay to Maj. Geo. W. De Costa. (Signed) Edw'd E. Paulding, paymaster U. S. A. Pay to Lt. Col. D. Gribben, paym. U. S. A. (Signed) Geo. W. De Costa, P. M. U. S. A. (Signed) David Gribben, paym. U. S. A.

Draft No. 6739 on war warrant No. 6848, Pt. [E. O. G.

$10,000.] TREASURY OF THE UNITED STATES,
Washington, Dec. 16th, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paymaster U. S. A., ten thousand dollars.
Issued on requisition No. 3096.
(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6739. Registered Dec. 16, 1865.
$10,000. (Signed) S. B. COLBY,
Register of the Treasury.

To the Lynchburg National Bank of Lynchburg, Va.

(Endorsed:) Place to my credit. (Signed) Edw'd E. Paulding, paymaster U. S. A. Pay to L. Norvell, esq., cash'r, or order. (Signed) C. A. Sherman, cash'r.

Draft No. 6740, on war warrant No. 6848, Pt. [E. O. G.

$15,000⅝. TREASURY OF THE UNITED STATES, [H. R.
Washington, Dec. 16th, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l pay-
110 master U. S. A., fifteen thousand dollars.
Issued on requisition No. 3096.
(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6740. Registered Dec. 16, 1865.
$15,000⅝. (Signed) S. B. COLBY,
Register of the Treasury.
To the Raleigh National Bank of North Carolina, Raleigh, N. C.

Draft No. 6741 *on war warrant No.* 6848, *Pt.* [E. O. G.

$500,000⁄⁄. TREASURY OF THE UNITED STATES, [H. R.
Washington, Dec. 16*th*, 1865.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paymaster U. S. A., five hundred thousand dollars.
Issued on requisition No. 3096.
(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6741. Registered Dec. 16, 1865.
$500,000⁄⁄. (Signed) S. B. COLBY,
Register of the Treasury.

To the First National Bank of Washington, D. C.
(Written across the face:) First National Bank of Washington, Dec. 16, 1865.

(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A. (Signed) H. S. Flynt, A. cashr.

Draft No. 2934, *on war warrant No.* 6848, *Pt.* [E. O. G.

111 $375,000.] TREASURY OF THE UNITED STATES. [H. R.
Req. 3096. *Washington, Dec.* 16, 1865.

At sight pay to Brt. Lt. Col. E. E. Paulding, add'l paymaster U. S. A., on order, three hundred seventy-five thousand dollars.
$375,000⁄⁄. (Signed) F. E. SPINNER,
Treasurer of the United States.

No. 2934. Registered December 16, 1865.
(Signed) S. B. COLBY,
Register of the Treasury.

TREASURER U. S., *Washington, D. C.*

(Written across the face:) Paid by Treasurer U. S., *Dec.* 16, 1865.

(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A.

War warrant No. 6848. Appropriation.

Treasury Department to the Treasurer of the United States, greeting:

Pay to Brt. Lt. Col. E. E. Paulding, additional paymaster U. S. A., present, or order, out of the appropriation in the margin, one million dollars, and for which sum he is to be charged and held accountable, pursuant to requisition No. 3096 of the Secretary of War, dated October 19, 1865, countersigned by the Second Comptroller of the Treasury, and registered by the Second Auditor. And for so doing this shall be your warrant.

112 Given under my hand and seal of the Treasury this 15th day of December, in the year one thousand eight hundred and sixty-five, and of Independence the 90.

Pay of 2 & 3 years' volunteers. H. E. W. H. R. & E. 15. $100,000. E. M.

[SEAL.] H. McCULLOCH,
Secretary of the Treasury.

Countersigned:
R. W. TAYLER,
Comptroller.

Recorded 15.
J. A. GRAHAM,
Asst. Register.

Received for the above warrant the following draft:

6737 1st N'l B'k of Richmond, Va	$50,000
" 8 N'l B'k of Virginia at Richmond, Va	50,000
" 9 Lynchburg National Bank of Lynchburg, Va	10,000
6740 Raleigh N'l B'k of North Carolina at Raleigh, N. C	15,000
" 1 1st N'l B'k of Washington, D. C	500,000
2934 Treasury do	375,000
	1,000,000

Draft No. 6781 *on war warrant No.* 6985, *Pt.* [E. O. G.

TREASURY OF THE UNITED STATES, H. R.
Washington, January 5, 1866.

Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paymaster, one hundred thousand dollars.

Issued on requisition No. 3420.

(Signed) F. E. SPINNER,
Treasurer of the United States.

No. 6781. Registered Jan'y 5, 1866.
$100,000. (Signed) S. R. COLBY,
Register of the Treasury.

113 To the Merchants' National Bank of Washington, D. C.

(Endorsed:) For deposit to my credit in public a/c with Merchants National B'k, Washington, Jan'y 6, 1866. (Signed) Ed'd E. Paulding, paymaster U. S. A.

Draft No. 3015 *on war warrant No.* 6985, *Pt.* [E. O. G.

$400,000. TREASURY OF THE UNITED STATES, [H. R.
Washington, January 5th, 1866.

At sight pay to Brt. Lt. Col. E. E. Paulding, add'l paymaster, or order, four hundred thousand dollars.

$400,000. (Signed) F. E. SPINNER,
Treasurer of the United States.

No. 3015. Registered Jan'y 5, 1866.
(Signed) S. B. COLBY,
Register of the Treasury.

TREASURER U. S., *Washington, D. C.*

(Written across the face:) Paid by Treasurer U. S. Jan'y 6th, 1866.

(Endorsed:) For deposit to my credit in public a/c with the U. S Treas. at Washington, Jan'y 6, 1866. (Signed) Ed'd E. Paulding, paymaster U. S. A.

War warrant No. 6985. Appropriation.

Treasury Department to the Treasurer of the United States, greeting:

114 Pay to Brt. Lt. Col. E. E. Paulding, add'l paym'r U. S. A., present, or order, out of the appropriation named in the margin, five hundred thousand dollars, and for which sum he is to be charged and held accountable, pursuant to requisition No. 3420 of the Secretary of War, dated Jan'y 2d, 1866, countersigned by the Second Comptroller of the Treasury, and registered by the 2d Auditor. And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury this 5 day of January, in the year one thousand eight hundred and sixty-6, and of Independence the 90.

Pay of volunteers. E. W. H. R. & E. 5. $500,000. C. S. C.

[SEAL.] H. McCULLOCH, *Secretary of the Treasury.*

Countersigned:
R. W. TAYLER,
Comptroller.

Recorded 5.
J. A. GRAHAM,
Asst. Register.

Received for the above warrant the following draft:

No. 6781 on Merchants' N. B., Washington	$100,000
" 3015 " Treasury, Washington	400,000
	500,000

115 *Draft No.* 692 *on war warrant No.* 7270 *Pt.* E. O. G.

$390,000. TREASURY OF THE UNITED STATES, H. R.
Washington, Feb'y 6, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l pay'r, three hundred ninety thousand dollars.
Issued on requisition No. 3421.
No. 6921. Registered Feb'y 6, 1866.

$390,000. (Signed) J. A. GRAHAM,
Asst. Register of the Treasury.
(Signed) F. E. SPINNER,
Treasurer of the United States.

To the First National Bank, Washington, D. C.

(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A.

Draft No. 6922 *on war warrant No.* 7270 *Pt.* E. O. G.

$30,000. TREASURY OF THE UNITED STATES,
Washington, Feb'y 6, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l pay'r, thirty thousand dollars.
Issued on requisition No. 3421.
No. 6922. Registered Feb'y 6, 1866.

$30,000. (Signed) J. A. GRAHAM,
Asst. Register of the Treasury.
(Signed) F. E. SPINNER,
Treasurer of the United States.

To the First National Bank of Richmond, Va.

(Endorsed:) Pay to the order of Lt. Col. David Gribben, pay-
116 master U. S. A. (Signed) Ed'd E. Paulding, paymaster U. S. A. (Signed) David Gribben, paym'r U. S. A. (Signed) S. A. Glover, cashier.

Draft No. 6923 *on war warrant No.* 7270 *Pt.* E. O. G.

$30,000⅌. TREASURY OF THE UNITED STATES, H. R.
Washington, Feb'y 6, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l pay'r, thirty thousand dollars.

Issued on requisition No. 3421.

No. 6923. Registered Feb'y 6, 1866.

$30,000⅌. (Signed) J. A. GRAHAM,
Asst. Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the National Exchange Bank of Richmond, Va.

(Endorsed:) Pay to the order of Maj. David Gribben, paymaster U. S. A. (Signed) Ed'd E. Paulding, paymaster U. S. A. (Signed) David Gribben, paym'r U. S. A.

Draft No. 6924 *on war warrant No.* 7270 *Pt.* E. O. G.

$50,000⅌. TREASURY OF THE UNITED STATES, H. R.
Washington, Feb'y 6th, 1866.

Pay to the order of Br't. Lt. Col. E. E. Paulding, add'l pay'r, fifty thousand dollars.

Issued on requisition No. 3421.

No. 6924. Registered Feb'y 6, 1866.

$50,000⅌. (Signed) J. A. GRAHAM,
Asst. Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

117 To the National Bank of Virginia, Richmond, Va.

(Endorsed:) Pay to the order of Maj. David Gribben, paymaster U. S. A. (Signed) Ed'd E. Paulding, paymaster U. S. A. (Signed) David Gribben, pay'r U. S. A.

War Warrant No. 7270.

Treasury Department to the Treasurer of the United States, greeting:

Appropriation.

Pay to Br't Lt. Col. E. E. Paulding, additional paymaster, present, or order, out of the appropriation named in the margin, five hundred thousand dollars, and for which sum he is to be charged and held accountable, pursuant to requisition No. 3421 of the Secretary of War, dated January 2d, 1866, countersigned by the Second Comptroller of the Treasury, and registered by the Second Auditor. And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury, this 6' day of February, in the year one thousand eight hundred and sixty-6, and of Independence the 90.

Pay of 2 & 3 years' volunteers, &c. E. W. H. $500,000.

[SEAL.] H. McCULLOCH,
Secretary of the Treasury.

118 R. & E. C. Esl. Recorded 6.

Countersigned:
R. W. TAYLER,
Comptroller.

J. A. GRAHAM,
Asst. Register.

Received for the above warrant the following draft:

No. 6921 on 1st, Washington	390,000
" 6922 " 1, Richmond, Va	30,000
" 6923 " Nat'l Ex., do. "	30,000
" 6924 " 1 Bank Va	50,000
	$500,000

Draft No. 6995 *on war warrant No.* 7538 *Pt.* E. O. G.

$300,000⅝. TREASURY OF THE UNITED STATES,
Washington, March 5, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l pay'r, three hundred thousand dollars.
Issued on requisition No. 3703.
No. 6995. Registered March 5, 1866.

$300,000. (Signed) S. B. COLBY,
Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the First National Bank of Washington, D. C.

(Written across the face:) First National Bank, Washington, Mar. 6, 1866.
(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A.

Draft No. 6996 *on war warrant No.* 7538 *Pt.* E. O. G.

$200,000⅝. TREASURY OF THE UNITED STATES,
Washington, March 5, 1866.

119 Pay to the order of Brt. Lt. Col. E. E. Paulding, add'l paymaster, two hundred thousand dollars.
Issued on requisition No. 3703.
No. 6996. Registered March 5, 1866.
$200,000⅝. (Signed) S. B. COLBY,
Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the National Bank of the Metropolis, Washington, D. C.

(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A.

War.
Warrant No. 7538.
Appropriation.

Treasury Department to the Treasurer of the United States, greeting:

Pay to E. E. Paulding, br't lt. col., additional paymaster, present, or order, out of the appropriation named in the margin, five hundred thousand dollars, and for which sum he is to be charged and held accountable, pursuant to requisition No. 3703, of the Secretary of War, dated Feb'y 28, 1866, countersigned by the Second Comptroller of the Treasury, and registered by the Second Auditor. And for so doing this shall be your warrant.

Bounty to vols. & regs.
120
E. W. H.
R. & E., 3.
$500,000.
E. S. C.

Given under my hand and the seal of the Treasury this 3d day of March, in the year one thousand eight hundred and sixty-6 and of Independence the 90.

[SEAL.] H. McCULLOCH,
Secretary of the Treasury.

Countersigned.
R. W. TAYLER,
Comptroller.

Recorded, 3.
J. A. GRAHAM,
Asst. Register.

Received for the above warrant the following draft':

No. 6995 on 1st Washington	$300,000
" 6996 " N. B. Metropolis	200,000
	500,000

Draft No. 7037 *on war-warrant No.* 7677 *Pt.* E. O. G.

$50,000⅀. TREASURY OF THE UNITED STATES,
Washington, March 22d, 1866.

Pay to the order of Br't. Lt. Col. E. E. Paulding, add'l paymaster, fifty thousand dollars.

Issued on requisition No. 3701.

No. 7037. Registered March 22, 1866.

$50,000⅀. (Signed) J. A. GRAHAM,
For Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the Raleigh National Bank of North Carolina, Raleigh, N. C.

(Endorsed:) Pay to the order of Maj. J. S. Stewart, paymaster U. S. A. (Signed) Ed'd E. Paulding, paymaster U. S. A. Raleigh, N. C., March 26, 1866. Pay to the credit of my disbursing account. (Signed) J. S. Stewart, P. M., U. S. A.

121 *Draft No.* 7038 *on war-warrant No.* 7667 *Pt.* E. O. G.

$30,000⅀. TREASURY OF THE UNITED STATES,
Washington, March 22d, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l paymaster, thirty thousand dollars.

Issued on requisition No. 3701.

No. 7038. Registered March 22, 1866.

$30,000. (Signed) J. A. GRAHAM,
For Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the National Bank of New Berne, N. C.

(Written across the face:) Paid April 14, '66, Nat. Bank of New Berne, N. C.

(Endorsed:) Pay to the order of Lt. Col. E. D. Judd, paymaster U. S. A. (Signed) Edw'd E. Paulding, paymaster U. S. A. (Signed) Edwin D. Judd, paymaster U. S. A.

Draft No. 7039 *on war-warrant No.* 7677, *Pt.* E. O. G.

$20,000. TREASURY OF THE UNITED STATES,
Washington, March 22d, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l paymaster, twenty thousand dollars.
Issued on requisition No. 3701.
No. 7039. Registered March 22d, 1866.
$20,000. (Signed) J. A. GRAHAM,
For Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the National Exchange Bank of Richmond, Va.

(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A.

Draft No. 7065 *on war-warrant No.* 7677, *Pt.* E. O. G.

122 $200,000⅞. TREASURY OF THE UNITED STATES, H. R.
Washington, March 31, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l paymaster, two hundred thousand dollars.
Issued on requisition No. 3701.
No. 7065. Registered March 31, 1866.
$200,000=. (Signed) S. B. COLBY,
Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the First National Bank of Washington, D. C.

(Written across the face:) First National Bank, Washington, Apr. 13, 1866.
(Endorsed:) Place to my credit. (Signed) Ed'd E. Paulding, paymaster U. S. A. (Signed) W. S. Huntington, cashier.

Draft No. 7066 *on war-warrant No.* 7677, *Pt.* E. O. G.

$200,000. TREASURY OF THE UNITED STATES,
Washington, March 31, 1866.

Pay to the order of Br't Lt. Col. E. E. Paulding, add'l pay'r, two hundred thousand dollars.
Issued on requisition No. 3701.
No. 7066. Registered March 31, 1866.
$200,000. (Signed) S. B. COLBY,
Register of the Treasury.

(Signed) F. E. SPINNER,
Treasurer of the United States.

To the National Bank of the Metropolis, Washington, D. C.

(Endorsed:) Place to my credit. (Signed) Edward E. Paulding, paymaster U. S. A. (Signed) A. S. Frissell, a. cash'r.

123 War

Warrant No. 7677.

Appropriation.

Treasury Department to the Treasurer of the United States, greeting:

Pay to E. E. Paulding, br't lt. col., additional paymaster, present, or order, out of the appropriation named in the margin, five hundred thousand dollars, and for which sum he is to be charged and held accountable, pursuant to requisition No. 3701 of the Secretary of War, dated Feb'y 28, 1866, countersigned by the Second Comptroller of the Treasury and registered by the Second Auditor. And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury, this 22d day of March, in the year one thousand eight hundred and sixty-6, and of Independence the 90.

Bounty to vols. & regs.
E. W. H.
R. & E., 22.
$500,000.
E. S. C.

[SEAL.]

H. McCULLOCH,
Secretary of the Treasury.

Countersigned:
R. W. TAYLER,
Comptroller.

Recorded, 22.
J. A. GRAHAM,
Asst. Register.

Received, for the above warrant, the following draft':

124	No. 7037, on Raleigh N'l Bk. of N. C., at Raleigh.....	$50,000		
	8, " The N'l Bk. of New Berne, N. C.....	30,000		
	9, " N'l Exchange Bk. of Richmond, Va.....	20,000		
			$100,000	Mch. 22.
	7065, " 1st Washington, D. C.....	200,000		
	7066, " N'l Bk. of the Metropolis, D. C.....	200,000		
			$400,000	Mch. 31.
			$500,000	

And afterwards, to wit, on the 11th day of May, in the year last aforesaid, the following depositions on the part of the defendants were filed in court here, to wit:

In the circuit court of the United States, district of Maryland. In equity. April term, 1870.

UNITED STATES
vs.
WILLIAM BAYNE, HORATIO R. RIDDLE, Allen A. Chapman, & others.

The complainant in the above cause will take notice that, on Friday the twenty-ninth day of April, 1870, at the office of James B. Metcalf, esq., U. S. commissioner, in the Herald building, in New York City, at 11 o'clock a. m., the defendants will proceed to take the depositions of Lawrence P. Bayne & Oscar King, to be used at the trial of the above cause.

S. T. WALLIS,
T. W. HALL, JR.,
Sols. for Defdts.

Service acknowledged this 20' April, 1870.

125 R. J. BRENT,
For Complt.
A. STIRLING, JR.,
U. S. Atty.

Notice referred to in annexed certificate.
JAMES BETTS METCALF,
U. S. Commissioner.

The within notice is accepted as sufficient, and the time, place, and commissioner named are satisfactory to the complainant.
A. STIRLING, JR., *U. S. Atty.*
R. J. BRENT.

UNITED STATES OF AMERICA,
Southern District of New York, City, County, and State of New York, ss:

Be it remembered that on this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy, I, James Betts Metcalf, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'"
126 passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at room No. 2, in the Herald building, No. 218 Broadway, in the city of New York, in the said southern district of New York, in the State aforesaid, Lawrence P. Bayne, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Maryland, held at Baltimore, Maryland, wherein the United States of America is plaintiff, against William Bayne, Horatio R. Riddle, & Allen A. Chapman, trustees of Bayne & Co. and others. And the said Lawrence P. Bayne, being about the age of fifty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Lawrence P. Bayne, and he did thereupon depose, testify, and say as follows, viz:

I reside at present at the city of New York, and I was a member of the late firm of Bayne & Co., whose trustees are some of the defendants in this suit.

Q. State whether, on or about the 21st of April, 1866, your late firm obtained any loan from the Merchants' National Bank of Washington City, and, if so, state the amount, and all the circumstances connected with the procurement of that loan.

127 A. On the 21st of April, 1866, we borrowed from the Merchants' National Bank one hundred and fifty thousand dollars. We received it in sums as follows, through the cashier of the First National Bank of Washington City, Mr. Huntington, he having ordered a trans-

fer of fifty thousand dollars to be placed to the credit of Bayne & Co., with Scott, Capron & Co., and also a transfer of fifty thousand dollars to be placed with Hoyt, Anthony, Douglas & Co., all of New York City; and on the 23rd of the same month Bayne & Co. received a balance, through Mr. Oscar King, one of the directors of the Merchants' National Bank of Washington, of fifty thousand dollars, making in all one hundred and fifty thousand dollars, the amount of loan granted. The fifty thousand dollars handed to us by Mr. King was a check drawn by Cashier Huntington on the National Croton Bank of New York, I think. This was the only loan we received from the Merchants' National Bank of Washington that month. The fifty-thousand-dollar check I have spoken of was drawn by Cashier Huntington either on the Central National Bank or the Croton National Bank of New York, and I think was drawn in favor of the Merchants' National Bank of Washington, and by it endorsed to Bayne & Co. I don't remember the exact date of that check, but I received it late on the 23rd day of April, 1866, nor am I positively certain as to its being drawn payable to the Merchants' National Bank of Washington, but it was the only check received
128 by us on account of that loan. I was telegraphed on the 20th of April, 1866, by the president of the Merchants' National Bank to visit Washington for the purpose of holding a conference with the directors of the bank and Mr. Huntington. I went, as requested, and met Cashier Sherman, Vice-President Boteler, and Director Oscar King, all of the Merchants' National Bank, and Cashier Huntington, of the First National Bank, in Mr. Huntington's parlor, at his house in Washington City, about nine or ten o'clock of the evening of the 20th day of April, 1866, having gone there at the request of the said officers of the Merchants' National Bank. I had previously made known to the Merchants' National Bank the embarrassed condition of my firm, and that we would require at least one hundred and fifty thousand dollars to relieve us. We were at that time very largely indebted to that bank. It was to aid my firm in raising this one hundred and fifty thousand dollars that this conference was held. After being introduced to Mr. Huntington, he stated to all present that he "had been requested by a gentleman of high official position, and that when he said high official position he meant the highest, to examine into the affairs of the Merchants' National Bank, and to give such relief to the bank as was necessary, if the affairs of the bank would justify it, in his opinion."

(Mr. Merrick, of counsel for the U. S., objects to the last clause of the witness' statement as to communications made by Cashier Huntington.)

129 Mr. Huntington then stated that he had found the Merchants' Bank all right, except that Bayne & Co. owed them too much money. He then asked me how much money I wanted to relieve me. I told him one hundred and fifty thousand dollars. He wanted to know what securities I could give if the money was advanced. I told him that a large portion of this money would be used in retiring a floating debt, a portion of which floating debt was secured by railroad and bank stock; and that as this debt was paid it would retire that stock, and that it would be handed over to the Merchants' National Bank. He asked me what railroad stock I referred to. I answered the Alexandria, Washington & Georgetown Railroad.

Q. Was it stated at that interview for what purpose those securities would be delivered to the Merchants' Bank?)

(Objected to by counsel for the U. S.)

A. It was stated by me that they were to be held as security for the

proposed loan of one hundred and fifty thousand dollars, a part of which was to be used in releasing them from the persons to whom they were then pledged as collaterals in Baltimore City.

Q. State if those securities were released by your firm, what they were, with what money released, when and to whom delivered.

A. The securities were released. I handed them over to the president of the Merchants' National Bank, and took his receipt for them; that is to say, I handed him eight hundred and fifty shares of the Alex-
130 andria, Washington & Georgetown Railroad Co. stock, one hundred shares of—(Counsel for the U. S. here interposes and asks witness from what he is reading)—the Merchants' National Bank stock, and a lot of Virginia bank-notes, how many I do not recollect; the aggregate value of which at that time was between eighty and eighty-five thousand dollars. The Merchants' National Bank also held a large amount of our bills receivable, endorsed by our firm to it; I can't say how much without referring to my books. From those bills receivable some sixty or seventy thousand *thousand* dollars were afterwards realized by the bank or its president. The bills were endorsed by us to "L. Huyck, president." (Counsel for the U. S. objects as to the statement as to how the bills were endorsed, unless the bills are produced or their absence accounted for.) I think the bank realized fully seventy thousand dollars from those bills receivable.

Q. Did your firm pass those bills receivable to the bank or to L. Huyck individually?

(Counsel for the U. S. objects.)

A. We passed them to the bank, to be held on account of any indebtedness of Bayne & Co. to the bank, and their proceeds to be applied in liquidation thereof. I cannot state whether those bills receivable were passed to the bank before or after the $150,000 loan. On or about
131 the first of May we transferred some seventy-five or eighty thousand dollars as bills receivable, and they held some before that date.

Q. Was the Washington, Alexandria & Georgetown R. R. Co. stock, the Merchants' National Bank stock, and the Virginia bank-notes, amounting, as you say, to some $80 or $85,000 transferred by your firm to the Merchants' National Bank before or after you received the loan of $150,000, in April, 1862?

A. After I received the loan of $150,000.

Q. State the conclusion of that interview at Huntington's of which you have spoken.

A. After a very general conversation, Mr. Huntington said, in substance, that the Merchants' National Bank would get the money asked for, and that the loan of $150,000, which I required, would be granted. This was said in the presence of all of the officers of the Merchants' National Bank whose names I have mentioned.

Q. Was Col. Paulding's name mentioned in that interview by any one?

(Objected to by the counsel for the U. S. as leading.)

A. It was not.

Q. Was the name of any individual mentioned, other than those present, from or through whom the money was to be procured, for the purpose of making you that loan?

(Objected to on the same ground.)

A. No other name was mentioned.

132 Q. Was it stated how or by whom the Merchants' National

Bank was to be supplied with funds to relieve it or to make you the proposed loan?

(Objected to on the same ground.)

A. It was not.

Q. Was anything said at that time as to the manner of supplying the Merchants' National Bank with funds? If so, state what.

(Objected to by the counsel for the U. S.)

A. The only impression upon my mind at the time was that it was to be supplied by the First National Bank of Washington, and that was the impression of all present, so far as I could judge from conversations I afterwards had with the directors of the Merchants' National Bank.

(Answer also objected to.)

Q. Did you or not know, at the time you obtained the loan of $150,000, or at any time before, from what particular source, or person, the Merchants' National Bank was to, or did, receive any funds, out of which it was to make you the said loan?

(Objected to generally, and as leading, by the counsel for the U. S.)

A. I did not.

Q. Before, or at the time of the making of said loan, had you or not ever heard the name of Col. Paulding connected with it?

(Objected to generally, and as leading, by the U. S.)

133 A. I never heard the name of Col. Paulding or that of any other United States officer connected with this loan in any way.

Q. Did you or your firm, to your knowledge, cause or procure the sum of two hundred thousand dollars, or any sum of money, belonging to the United States, and deposited to the credit of Paymaster Paulding in the First National Bank of Washington City, to be withdrawn from said bank by means and contrivance of certain checks drawn by the said Paulding and redeposited in the National Merchants' Bank of Washington at any time? And, if so, state what sum and when.

(Objected to generally, and as leading, by the U. S.)

A. I did not; neither did my firm.

Q. Had you or your firm, to your knowledge, any knowledge of such transfer made by Paymaster Paulding; and, if so, what knowledge, and when did you first obtain it?

A. I never had, nor had my firm, any knowledge of such transfer by Paymaster Paulding, and I only know it now by hearsay, derived since the failure of the Merchants' National Bank about the 5th day of May, 1866.

Q. At what time did you return to Baltimore after your interview at Huntington's house?

A. I returned the next morning by the six o'clock train.

Q. When did you next go to Washington City; was it before or after the loan was made to your firm?

134 A. It was after the loan was made.

Q. Where were you when you received information that the $150,000, agreed to be loaned, had been advanced to your firm?

A. I was in the city of Baltimore.

Q. Did any other member of your firm go to Washington City, in regard to that business, at any time before the money had been actually advanced?

A. Not to my knowledge.

Q. Had any of your firm, except yourself, any connection with the negotiation or arrangements concerning the loan of $150,000?

(Objected to by the U. S.)

A. None other save myself.

Q. Were the railroad and bank stock delivered to the Merchants' National Bank to secure any particular debt? And, if so, name what one.

A. At the time that Bayne & Co. delivered to the Merchants' National Bank the securities named, which they released by using a part of the $150,000, they made no special application of them, but intended that they should be applied in accordance with the understanding made and had between me and Mr. Huntington at his house in the conversation I have referred to.

(Objection by counsel for the U. S. to the statement of the witness, so far as it relates to the intentions of Bayne & Co.)

135 Q. Would you have delivered that stock to the Merchants' Bank had you not received the loan of 150,000?

(Objected to as leading.)

A. No, sir; I would not. I could not.

Q. Have you any knowledge as to the custom and habit of the national banks in Washington City, in regard to assisting each other out of their respective difficulties, and in regard to the motive and reason for such custom? If so, stated.

(Objected to by the counsel for U. S.)

A. I have no personal knowledge, so far as Washington City is concerned.

Q. Do you or do you not know that the First National Bank of Washington City had an interest in assisting the Merchants' Bank out of its difficulties in 1866, in April? And, if so, state your knowledge and the sources thereof.

(Objected to generally, and as leading.)

A. I have no knowledge upon that subject, except a belief based upon what I have heard stated by others.

Q. What was the habit of the national banks in regard to assisting each other?

(Objected to by the counsel for the U. S.)

A. It has been, and is now, the habit of banks to make temporary loans to the bank or banks which may be short of funds.

Q. Was the Government in the habit of depositing in the banks

136 in Washington, so far as you know?

(Objected to generally, and as leading.)

A. The Government did deposit in all banks named as public depositories in Washington City. The Merchants' National Bank was one of them, and the First National Bank was another.

Q. What was the opinion among banking-men as to the effect which would be produced upon national banks by the failure of one, in any given locality, when that one was a Government depository, and how far, if at all, did that opinion induce the national banks to sustain each other?

(Objected to by the counsel for the U. S.)

A. The opinion was that the failure of one would be more or less disastrous to all, and would be discreditable to the system. Hence it was to the interest of national banks to sustain each other.

Cross-examination by the counsel for the U. S.:

Q. At whose request did you go over to Washington City *and* the 21st of April, 1866?

A. At the request of the president of the Merchants' National Bank, conveyed by telegraph.

Q. Did you receive a communication in regard to your visit from Oscar King?

A. Not to my recollection.

137 Q. Had you before the occasion of the meeting at Huntington's house on the night of the 20th of April, 1866, explained to Oscar King the financial distress of Bayne & Co., and requested him on your behalf to make arrangements by which that firm could obtain funds necessary for their relief?

A. I did converse with Mr. King about the 10th or 13th of April, 1866, with reference to our wants, and sought to impress upon him the importance of our raising $100,000 or $150,000. This conversation was had with him as a director of the bank.

Q. Did you request him to endeavor to raise the money for you?

A. I think I did request him to aid me in raising it.

Q. Did he go over to Washington City from Baltimore for that purpose?

A. Not to my knowledge. I do not know that he went specially on that business. He lived in Baltimore, but was dealing with the Departments at Washington.

Q. Had he not been to Washington for you or your firm on this business prior to the 10th or 13th day of April, 1866?

A. I cannot recollect at this late day.

Q. Did you not write to Mr. Huyck on the 13th of April, 1866, and say to him that King had informed you that he could arrange

138 it to get $150,000 from a party in Washington to be deposited in the Merchants' Bank, provided he, Huyck, would immediately turn the same over into your hands?

A. If I so wrote to Mr. Huyck, I answer yes. My impression is I did write to Mr. Huyck to that effect. There is a full explanation to be found on pages 9, 10, 11, 12, and 13 of the printed pamphlet which I now produce.

(Pamphlet marked "Exhibit A, I. B. M., 29-4-'70," & offered in evidence. The latter part of the answer, and the pamphlet, objected to by the United States.)

Q. Is this the pamp'let from which you were reading during the progress of your examination-in-chief, when I interrupted one of your answers to interpose the inquiry as to what paper you were reading from?

A. It the pamphlet referred to, but it can hardly be said I was reading from it, as I was only using it to refresh my memory. It was written by myself, and published as my vindication shortly after my failure.

Q. Was it true, as stated in your letter to Huyck of the 13th of April, 1866, and which appears to be printed on pages 9 and 10 of the pamp'let you have handed to the commissioner, that King had informed you that he could arrange to get $150,000 from a party in Washington, to be deposited in the Merchants' Bank, provided Huyck would immediately turn the same over into your hands?

A. It was true, but he never got a dollar of it; the whole negotiation failed.

139 Q. Do you know of your own personal knowledge that the negotiation referred to did fail?

A. It failed so far as I was a party to it.

Q. You did get $150,000 in the way indicated, and upon the terms proposed, did you not?

A. I did get $150,000 from the Merchants' National Bank on the 21st day of April, 1866, but, as I understood it at the time, it was not the transaction referred to in my letter.

Q. Was not the $150,000 which you say you got from the Merchants' Nat. Bank on the 21st day of April, 1866, transferred to that bank as

matter of form, with the distinct understanding, as stated in your letter of the 13th, that it should be immediately turned over into your hands?

A. The understanding was to the effect that if the Merchants' Nat. Bank succeeded in getting the loan from Mr. Cashier Huntington, which that bank had asked for, then $150,000 of the amount was to be advanced, transferred, or lent to Bayne & Co., and that was to be done immediately.

Q. State particularly the language used by Mr. Huntington on the occasion of the meeting at his house in reference to this transfer.

A. The lapse of time is so great that I cannot recollect his precise language on that occasion.

Q. Was the word "loan," in connection with the transfer of the money to the Merchants' Bank, used at that interview?

A. I do not now recollect. If the word "transfer" was used in-
140 stead of "loan," it had the same meaning to me as if it had been termed a "loan." The amount had to be transferred from one bank to another before it could be transferred to Bayne & Co.

Q. Have you not stated in your examination-in-chief that you received this $150,000 directly from the First National Bank, and don't you know that the fund never went into the Merchants' Nat. Bank at all?

A. I have stated that the First Nat. Bank of Washington did cause to be transferred $50,000 from the house of Jay Cooke & Co. to the house of Scott, Capron & Co., and from some other bank $50,000 to the house of Hoyt, Anthony, Douglas & Co., for account of Bayne & Co., being so instructed to do by the Merchants' Nat. Bank, and that I also received $50,000 more in a check drawn by Cashier Huntington upon their correspondent in the city of New York for $50,000, the same being made payable to Sherman, cashier of the Merchants' National Bank, and endorsed by the said Sherman, cashier, to Bayne & Co. The three amounts making in all the $150,000 which I received from the Merchants' Nat. Bank, and so credited to that bank on the books of Bayne & Co.

Q. Was not the transfer made by Huntington on the 21st of April, 1866, of $50,000, with Scott, Capron & Co., of New York, and of $50,000 with Hoyt, Anthony, Douglas & Co., of New York, to the credit of Bayne & Co., so made to those parties in accordance with a distinct understanding between you and Huntington, on the night of the 20th of April, 1866?

A. If the loan was made at all, as the Merchants' National
141 Bank did not have facilities in New York to make the transfer, it was understood that the transfer in New York would be made by the First National Bank to the parties indicated in the interrogatory.

Q. How much did you owe the Merchants' Nat. Bank on the 20th day of April, 1866?

A. I cannot now recollect. The accounts in the hands of the bank will show the exact amount.

Q. Did your firm owe the bank as much as seven hundred thousand dollars at that time?

A. No, sir; under a proper statement of the accounts it would not exceed but a very little over two hundred thousand dollars. (The witness, desiring to correct himself, further says:) I didn't owe the bank any such sum as $700,000. I cannot be definite as to what sum we did owe at that time, in the absence of my books. I at first understood the question to refer to the final settlement of our accounts.

Q. Did you owe the Merchants' Bank anything on the 20th day of April, 1866?

A. Yes, sir.

Q. How much?

A. I cannot say.

Q. How much did your firm owe the Merchants' Nat. Bank at the time of its failure in May, 1866?

A. At the time we rendered our accounts to the Merchants' Nat. Bank for final settlement, it then appeared we owed the bank about two hundred thousand dollars, to the best of my recollection.

Q. Did you get any funds from the Merchants' Nat. Bank after the 21st of April, 1866?

142 A. I cannot recollect. The accounts will show.

Q. Did you make any payments to the Merchants' Nat. Bank after the 21st of April, 1866?

A. I cannot now recollect. The accounts will show. Those accounts are full and complete, and have been in the hands of receiver of the bank more than four years.

Q. What was the amount of the liabilities of Bayne & Co. at the time they failed?

A. I cannot recollect.

Q. What was the amount of the liabilities of Bayne & Co. on the 20th day of April, 1866, and what did you represent it to be at the meeting at Huntington's house?

(Objected to generally and for irrelevancy.)

A. I do not recollect.

Q. Did you not represent that your liabilities and assets amounted to some specific sum at Huntington's house?

(Same objection as the last.)

A. I do not remember of having made any such representation. There was an informal conversation upon the subject, and I there stated, I think, that my assets amounted to my liabilities.

Q. Did you not represent at that meeting that the debt of Bayne & Co. to the Merchants' Nat. Bank was very heavy, that without the desired relief your firm would have to go down, and would drag the bank after it, but that, with the relief asked, you would go through your

143 disasters successfully, & thus avert the threatened peril to the bank?

(Same objection as last.)

A. I did represent that the debt was large, and that without relief the house of Bayne & Co. would fail, but with the assistance of a loan of $150,000 I thought that the house would certainly be sustained. That statement was based upon the pledge of the Merchants' Nat. Bank that they would protect acceptances of Bayne & Co. for $150,000 then out, which were given for the benefit and accommodation of the bank. These acceptances were not protected by the bank. Bayne & Co. paid a part of them; I cannot say how much, nor do I remember *that* dates at which they were given.

Q. When did these acceptances mature?

A. Between the 24th of April and the 8th of May, 1866.

Q. Were these accommodation-acceptances, or were you at the time of giving the acceptances not indebted to the bank in a larger sum than the amount thereof?

A. When these bills were accepted it was under the express stipulation that they were to be paid by the bank, and the president of the bank obligated himself so to do. This was done irrespective of the loan of $150,000. We did owe the bank money at the time of giving these acceptances, but the president was duly informed of our inability at that time to liquidate that balance.

Q. How much was that balance?

A. I cannot recollect now.

Q. Was it not greater than the amount of the acceptances?

144 A. I do not now recollect. But that balance had no reference to the protection of these drafts.

Q. Do you know whether the money obtained upon these drafts ever went into the bank?

(Objected to.)

A. I do not. Bayne & Co. received no benefit from it.

Q. Did not Bayne & Co. receive remittances from the Merchants' National Bank after the date of those acceptances?

A. We did, but they were not applicable to the payment of these acceptances.

Q. To what were they applicable?

A. For currency and the payment of their sight-drafts.

Q. Did you not receive from the Merchants' Nat. Bank, after the date of these acceptances, loans of money, and before the 20th of April, 1866?

(Objected to as irrevelant.)

A. We received no moneys from the Merchants' Nat. Bank except such as was subject to sight-check. The bank was making remittances to us and checking against them daily.

Q. How did the balance stand from the date of those acceptances up to the 20th day of April, 1866; was it not every day in favor of the bank to the amount of over $200,000? State as nearly as you can recollect.

A. I cannot recollect. The accounts will show.

Q. In the final account, which you speak of as having been

145 rendered by Bayne & Co. to the Merchants' National Bank, did you charge up against the bank the amount of the acceptances?

(Objected to.)

A. We did.

Q. Was Huntington, on the night of the 20th of April, 1866, a party to the agreement you say was made at that time that the bank should protect these acceptances?

(Objected to.)

A. I have nowhere stated that the agreement was made at that time at Mr. Huntington's house. I am not aware that Huntington knew at that time that such acceptances were out. The acceptances were given to the Merchants' Nat. Bank, and I didn't think Huntington had anything to do with it.

Q. Was there any understanding between you and Huntington, or you and the Merchants' Bank, on the night of the 20th of April, 1866, as to what particular debt the securities you say were to be released should be applied?

A. I understood that as I took up the securities with this $150,000 I was to hand them over to the bank.

(Counsel for the U. S. calls upon the commissioner to repeat the question.)

Q. (Question repeated.)

A. It was understood that, so far as this money was used for the payment of loans which had been contracted by Bayne & Co. upon collaterals deposited, those collaterals, when relieved by the payment of

146 money obtained under the agreement then made at Mr. Huntington's house, that the said collaterals or securities should be, in pursuance of that agreement or arrangement, handed over to the Merchants' Nat. Bank, and it was left for the bank to determine as to what portion

of the debt due from Bayne & Co. to said bank the same should be applied.

Q. What became of the eight hundred and fifty shares of railroad-stock thus released and by you handed over to the bank?

A. I do not know.

Q. What other securities beside the 850 shares of railroad-stock did you release and hand over to the bank?

A. One hundred shares of the Merchants' Nat. Bank, a lot of Marietta & Cincinnati Railroad bonds, and some Virginia bank-notes, I do not remember how many.

Q. Did you not state to Mr. Huntington, on that night of the 20th of April, 1866, that the only securities you could release and hand over were the stock of the Washington, Georgetown and Alexandria Railroad Co. and the Merchants' Bank stock?

(Objected to.)

A. I did; but that did not prevent me from handing over other securities.

Q. Who held the Virginia bank-notes, and for what debt were they pledged?

(Objected to as irrelevant and immaterial.)

A. I do not now recollect.

147 Q. Did you hand over to the bank any collateral except railroad-stock and bank-stock after the 21st of April, 1866?

A. I do not recollect.

Q. Do you recollect delivering to the Merchants' Nat. Bank any collaterals at all after the 21st of April, 1866?

A. I remember distinctly that I gave 850 shares of railroad-stock to the president, and 100 shares of bank-stock to the cashier, for which Bayne & Co. hold receipts.

Q. With whom was the 850 shares of railroad-stock deposited as collateral security at the time you released it?

(Same objection as the last.)

A. It was in different lots, and I cannot recollect with whom I deposited it.

Q. Was it the property of Bayne & Co., subject to the lien of the debts for which it had been hypothecated?

(Same objection.)

A. We had advanced money upon it, and we had advanced credits upon it, and we considered we had the right to take up one loan and make another upon it. In that view of the case we handed it over to the bank as a legitimate security for the money they had advanced us.

Q. The title to the stock, then, was not in Bayne & Co., but they held it simply in pledge?

(Same objections.)

A. I have answered this in answering the previous question.

148 My right to use it was never disputed by the owner.

Q. Who was the owner of that stock, and who pledged it with you?

(Same objection.)

A. Leonard Huyck was the owner; and in his individual capacity, and not as president of the Merchants' Bank, he pledged it with Bayne & Co.

Q. Did you before handing over this stock to the Merchants' National Bank, or to Leonard Huyck, president, receive from Leonard Huyck, individual, the amount due to the firm of Bayne & Co., to secure which that stock was hypothecated?

A. I did not receive one dollar. He owes us the money to this day.

Q. How much had you loaned him?

A. I do not recollect; a very large amount.

Q. Did the firm of Bayne & Co. negotiate any of the 7.30 bonds for the Merchants' National Bank?

(Same objection.)

A. We did. I can't say the amount, but it was several hundred thousand dollars. The proceeds were placed to the credit of the bank on our books and checked against by it at pleasure. We negotiated them in 1865, and, I think, in 1866.

Q. What commissions did you receive?

(Same objection.)

A. Not to exceed one-quarter of one per cent.

149 Q. Did you testify as a witness before the military tribunal before which Col. Paulding was tried?

A. Yes, sir; I did.

Q. Did you at that examination, in reply to the following question, to wit: "Q. Are you not also aware of the fact that the solvency of the Merchants' Bank depended on your solvency?" answer as follows: "A. No, sir; I am not aware of that fact. From representations made to me, it would appear that it did not depend upon my solvency, if I could have paid all I owed it. I suppose I owed the bank about four hundred thousand dollars. They have me down for seven hundred and fifty or seven hundred and sixty thousand, but it was about four hundred thousand." Did you make that statement?

A. I did so testify, but I wish to explain. The amount named was a supposititious balance, and was stated before the accounts were made up.

Q. What is the value in the market of the Washington, Georgetown & Alexandria R. R. Co. stock?

A. I do not know.

Q. Don't you know that it has no market-value and is worthless?

A. I do not.

Q. When did the firm of Bayne & Co. fail?

150 A. They made an assignment on the 5th day of May, 1866, and suspended payment a few days before.

Q. Are you one of the surities on Col. Paulding's official bond?

A. I am.

Q. Is Oscar King another of those surities?

A. He is.

Redirect by counsel for the defendants:

Q. State how you came to be a surety on Col. Paulding's bond, and your personal relations with him at that time.

A. I signed the bond purely to accommodate Mr. King, Col. Paulding being an entire stranger to me at the time. Col. Paulding was on his way north, sick. A Mr. Gardner was to have gone on the bond, but having failed to do so, at Mr. King's request I took his place. King kept a good account with me, and I did it accommodate him.

Q. If the Merchants' Nat. Bank had not been under promise to your firm to meet those acceptances of $150,000 of which you have testified, would your firm have entered into the arrangement for the $150,000 loan?

(Objected to as leading, irrelevant, and inadmissable.)

A. No; and I so notified the vice-president of the bank and Mr. King, one of the directors. The $150,000 loan would not have saved me unless the acceptances had been protected.

151 Q. Do you know, and if so state, the condition of the Merchants' Bank, and what efforts, if any, were made by its officers to secure it assistance, without regard to its dealings with your firm, anterior to the 21st day of April, 1866?

A. I know nothing personally, except that some of the officers of the bank were very busy trying to raise money for its use.

Q. In saying on your cross-examination that you transferred railroad and bank stock to the Merchants' Bank, do you mean to be understood as saying that you transferred to them no other assets after the loan of $150,000?

A. I do not; I think we also transferred to them a lot of bills receivable, as mentioned in my examination-in-chief.

Q. In the conversation with Mr. King, mentioned in your letter of the 13th of April, 1866, was it stated from what party he was to procure the $150,000 to be deposited in the Merchants' Nat. Bank?

A. No, sir; but my impression was (the counsel for the U. S. objects to the witness giving his impressions) that it was to come from some of the national banks.

Recross by the counsel for the U. S.:

Q. Was not the fund referred to in your last answer expected to be obtained thro' the national banks having deposits of public moneys?

A. That was my impression, but I have no positive reasons for believing it.

152 Q. If, as you state in your redirect examination, you would not have borrowed the $150,000 advanced to you on the 21st of April, 1866, unless you had felt assured that the Merchants' Bank would protect the acceptances to which you have referred, and you deemed it of so much importance that you notified Mr. King, a director and the vice-president of the bank, to that effect, why did you not also so notify and inform Mr. Huntington of this important feature of the negotiation, in your conversation with him at his house on the night of the 20th of April, 1866, when you knew he was investigating the affairs of the bank & of Bayne & Co., for the purpose of determining whether you could have this money with safety and benefit or not, and when you had gone to Washington, as you state, for the express purpose of meeting him and explaining to him the condition of Bayne & Co., in order to get the money?

A. Because prior to the interview held with Mr. Huntington, the officers of the Merchants' Nat. Bank assured me that these acceptances would be paid by the bank, and that the negotiations then going on, if successful, would afford ample relief to the bank as well as to Bayne & Co.; and, further, that these acceptances were in fact and in truth an obligation of the bank, a debt which that bank had taken upon itself to pay; it was therefore proper that the bank should make the communication to Mr. Huntington and not Bayne.

153 Q. For long a period were you to have the use of this $150,000, and when were you to pay the bank anything upon the other debt you owed it?

A. The $150,000 was to remain in my hands until the party loaning the money to the bank should demand the same, which would certainly not be done in thirty days. Nothing was said as to the payment of the other debt.

Q. Were the bills receivable, which you speak of in your redirect examination as having transferred to the Merchants' Nat. Bank, transferred before or after the 21st day of April, 1866?

A. I cannot recollect. The accounts will show.

L. P. BAYNE.

Subscribed and sworn to before me this 29th day of April, 1870.

JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of N. York.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss :

Be it remembered that on this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy, I, James Betts Metcalf, a commissioner duly appoined by the circuit court of the
154 United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at room No. 2 in the Herald building, No. 218 Broadway, in the city of New York, in the said southern district of New York, in the State aforesaid, Oscar King, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Maryland, held at Baltimore, Maryland, wherein the United States of America is plaintiff against William Bayne, Horatio R. Riddle, & Allen A. Chapman, trustees of Bayne & Co. and others.

And the said Oscar King, being about the age of forty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Oscar King, and he
155 did thereupon depose, testify, and say as follows, viz:

I reside at No. 28 W. 23d st., in the city of New York.

Q. Were you connected with the Merchants' National Bank of Washington City in April, 1866?

A. I was a director of that bank at that time.

Q. State whether at that time the bank was endeavoring to obtain currency; and, if so, what efforts were made for that purpose?

A. All banks were endeavoring to get currency. We were also. We were soliciting business, like other banks, and Government deposits. We had the deposit of Col. Paulding, And of two or three other paymasters; Col. Paulding's was the largest account we had.

Q. Did you make application to any Government officer in April, 1866, to make deposits in your bank? And, if so, state all the facts connected with such application.

A. I can't remember now the number of paymasters I talked to to get their accounts, but I did speak to Col. Paulding, who kept the largest account of any paymaster there. I asked Col. Paulding to increase his deposit with us, and he refused to do so. This was in the early part of April, 1866; at one time in April, 1866, the bank got into a close place, and we required help by which we could aid Bayne & Co., of Baltimore, who were indebted to the bank in a large amount. We

applied to Col. Paulding for further deposits, and he refusing, the application was made to the First National Bank for help from
156 them. Mr. Huntington, the cashier of the First National Bank, was sent to the Merchants' National Bank to see the condition of the bank. After looking over the affairs of the bank, Mr. Huntington saw no reason why the bank could not go on if they got the money Bayne & Co. owed them, but before he would decide to help the bank, he wanted to see Mr. Bayne. The officers of our bank made an engagement to meet Mr. Huntington with Mr. Bayne, at Mr. Huntington's house, on the evening of the 20th of April. We, that is to say, Messrs. Huntington, Bayne, Sherman, Boteler, and myself, met at Mr. Huntington's house. After examining Mr. Bayne, Mr. Huntington decided to help our bank to money next day upon certain conditions of securities being given by Bayne & Co. to our bank. The amount to be loaned the Merchants' Nat. Bank by the First Nat. Bank was $150,000 or $200,000. The next morning a deposit of $150,000 or $200,000 was made by them with us.

Q. Was anything said in the interview that night at Huntington's house as to the source from which the money was to be obtained which was to be advanced to the Merchants' Bank by the First National Bank?

(Objected to generally & as leading.)

A. No, sir.

(So much of the foregoing statements as relate to conversations with third parties objected to by the U. S.)

Q. During the interview at Huntington's house was Col. Paulding's name mentioned?

157 (Objected to as leading.)

A. Not that I heard.

Q. During that interview was anything said about the transfer of any Government funds from the First National Bank to the Merchants' National Bank?

(Objected to as leading.)

A. No, sir.

Q. When did you first hear, and how, that Col. Paulding had transferred $200,000 from the First National Bank to the Merchants' National Bank? Where did you hear it, and was it before or after the loan made to Bayne & Co.?

A. At the First National Bank, the next day after our interview at Mr. Huntington's; in the morning when I and Sherman went there to see if the arrangement of the night before had been carried out, I heard for the first time that Paulding had made the transfer. I did not know until then that Paulding intended to make a transfer. Mr. Huntington then stated that he had conversations with parties high in authority, and that the arrangement made was satisfactory, or to that effect. The arrangement for the loan to Bayne & Co. was made the night before, and the manner in which the money was to be paid was also fixed. In order to save Bayne & Co. from going to protest the next day in New York, it was necessary to have the money there, and to do this the telegraph had to be used.

158 Q. What officers of your bank were present at the interview at Huntington's?

A. The cashier Mr. Sherman, Mr. Boteler, the vice-president, and myself, a director.

Q. With whom were you negotiating for the funds which you then required for your relief?

A. With Mr. Huntington, the cashier of the First National Bank.

Q. At that time how did you and the other officers regard the condition of the Merchants' National Bank, as to its solvency?

A. We considered the bank solvent if it realized upon *upon* the debt which Bayne & Co. owed us, which we had every reason to believe we would get.

Q. Was the transfer by Col. Paulding of the $200,000 Government funds from the First National Bank to the Merchants' National Bank made by the procurement or at the instance of the Merchants' Bank or any of its officers?

(Objected to as leading.)

A. No, sir; it was not.

Cross-examination by the United States:

Q. Were you a director of the Merchants' Nat. Bank at the time of its failure in 1866?

A. I was.

Q. How much stock did you own?

A. Fifty shares.

159 Q. Had you transferred those shares to Bayne & Co. at that time?

A. I think I had, to them or some one else. I had them assigned in blank and deposited with Bayne & Co.

Q. Why were they deposited with Bayne & Co.?

A. I made a loan from Bayne & Co., and deposited with them that stock of the Nat. Exchange Bank of Richmond as security.

Q. Was Hamilton G. Fant at that time connected with the Nat. Exchange Bank of Richmond?

A. He was not.

Q. How much money did you get from Bayne & Co.?

A. I don't know the exact amount. I deposited with them $20,000 of those securities as a basis of credit on which I was to draw.

(Objected to as irrelevant.)

Q. How much did you draw?

A. I don't know.

Q. How much have you paid to settle your account?

A. I have paid it all.

Q. When did you pay it?

A. I don't know how long I had the loan. Perhaps it was from thirty to sixty days.

Q. Did you pay it before or since the failure of the Merchants' National Bank?

(Same objection as before.)

A. Long before that failure.

160 Q. Why were not the certificates of stock delivered up to you when you made the payment of this loan?

(Same objection as before.)

A. Because I didn't ask for them, as I left them there as a deposit for a continuing credit.

Q. Were you otherwise interested in the firm of Bayne & Co.?

A. No, sir.

Q. Did you receive any compensation from the Merchants' National Bank for the deposits which you secured to have made there; if so, how much?

(Objected to as irrelevant.)

A. I did; but I cannot state how much.

Q. Were you not examined as a witness before the military tribunal

by which Col. Paulding was tried on charges relating to the transfer concerning which you have been testifying on your examination-in-chief?

A. I was.

Q. Did you not testify on that trial that you received three per cent. on deposits secured to the Merchants' National Bank by you?

A. I cannot say. I forget what I did testify.

Q. If you forget what you did testify to on that trial, do you feel at all confident in your recollection now of the facts that occurred before the trial and about which you have been testifying?

A. I have a distinct recollection of the most of the testimony given in that case.

161 Q. Did you not testify on that trial that you received from the Merchants' National Bank three per cent. on all deposits made in that bank by Col. Paulding?

A. I think I testified as to receiving a percentage on the deposits to a sufficient amount to pay my expenses. I drew it from the bank, and they charged it as the payment of my expenses.

Q. Do you mean to say that it was simply for expenses, and not for compensation?

A. That was my understanding with the bank.

Q. State the amount of expense you incurred in securing deposits to be made in that bank.

(Objected to as irrelevant.)

A. I didn't incur any expense in securing the deposits; it was for my services in the general managing of the bank.

Q. Who else was employed in the same duty by the bank as yourself in securing deposits, and paid as you were?

(Same objection as above.)

A. No one, to my knowledge.

Q. State whether, in the examination before the military tribunal before which Col. Paulding was tried, you testified as follows—I read questions and answers: "Q. Then you did receive three per cent. interest on the amount of his (Col. Paulding's) deposits?—A. Yes,

162 sir. Q. You received that three per cent. in consideration of your securing the deposits to that bank?—A. I had it for my services benefiting the bank. Q. You have spoken of having received three per cent. on his (Paulding's) deposits; did you not receive that three per cent. in consideration of securing that deposit to the bank?—A. I received three per cent. on three months of interest. Q. Did you not receive three per cent. interest upon the amount of Col. Paulding's deposits there in consideration of your services in securing those deposits?—A. I did. I have stated so. I have stated I got three per cent." State now if you so testified before that military tribunal.

(Same objection as above.)

A. That is correct.

Q. What service did you render in obtaining the deposit of $150,000 or $200,000 testified to by you in your examination-in-chief as having been made by Col. Paulding on or about the 20th of April, 1866?

(Objected to as irrelevant.)

A. I don't know that I rendered any services. That was a deposit I didn't get.

163 Q. Have you not testified that you received three per cent. on three months' interest on that deposit?

(Same objection as above.)

A. I don't think I have.

Q. Did I understand you to state in your examination-in-chief that

you did not know that Col. Paulding was to transfer the funds it was agreed in your consultation at Huntington's house should go to Bayne & Co.?

A. I did state in my examination-in-chief that I did not know that Paulding was to transfer the money that was to go to Bayne & Co.

Q. I read from your examination on the trial of Col. Paulding above referred to: "Q. Was Mr. Huntington clear and emphatic in the statement that he would recommend the transfer?—A. Yes, sir; very positive. Q. This was a transfer to the Merchants' National Bank by Col. Paulding of funds in the First National Bank to his credit?—A. Yes, sir." Did you so testify?

A. I cannot recollect.

Q. Don't you recollect that Mr. Huntington stated on that night that Col. Paulding would make the transfer the next day?

A. No, sir; I have no recollection of that.

164 Q. Can you say that he did not so state?

A. I have no recollection of Col. Paulding's name being mentioned that night at that house.

Q. Had you not requested Col. Paulding to make a transfer of funds on the 19th or 20th of April, 1866?

A. I think that some days before that transaction was made I had some conversation with Col. Paulding as to transferring his funds, and he refused to do so. This was not in regard to any particular loan.

Q. How much did you ask Col. Paulding to transfer on the occasion of the conversation you say you had with him?

A. I cannot recollect the amount.

Q. I read from your deposition on the trial referred to: "A. I asked the col. for a transferance, I think, at that time. I think it was in April; it was along the 19th or 20th. Q. What amount did you request him to transfer?—A. A hundred and fifty or two hundred thousand dollars." State whether you so testified, and whether you think your memory in regard to the facts was more distinct then or is more distinct now.

165 A. I suppose I so testified. I cannot say whether I think my memory is better now than it was then as to the facts or not.

Q. Were you not at Col. Paulding's office on the morning after the meeting at Huntington's house before the check upon which this transfer was made had left his control and possession?

A. I was at his office that day, but cannot say whether it was before that check was made out or afterwards.

Q. I read from your testimony on the trial above referred to: "Q. What did you say to the col. relative to the transfer on Saturday?—A. I saw the colonel in his office about 12 o'clock; I think the time the checks were made out. Q. Where were the checks then?—A. A at his office." State if you so testified, and whether the checks referred to were the checks upon which the transfer in question was made.

(This question and the preceding questions in regard to the same subject-matter objected to as irrelevant, and because not responsive to the examination-in-chief.)

A. I so testified.

166 Q. When did Bayne first inform you of the financial stress in which Bayne & Co. were in the spring of 1866?

A. I think a few days before the interview at Huntington's house.

Q. Was it not more than ten days before that interview?

A. I do not think it was.

Q. Had not L. P. Bayne requested you some days before that interview to raise one or two hundred thousand dollars for him, by getting

public moneys deposited in the Merchants' National Bank, or in some other way, and explained to you the necessities of his firm for financial aid?

A. I do not recollect the time. It was some few days before the failure; I cannot recollect the date.

Q. Were you not for some days before the interview at Huntington's house endeavoring to make arrangements by which Bayne & Co. could get one or two hundred thousand dollars?

A. I have no recollection of time, or of the amount he wanted.

Q. Can you say that about that time you were not making efforts to accomplish arrangements by which they could get one or two or three hundred thousand dollars, or some large sum of money?

A. A few days before the failure of the Merchants' National Bank Mr. Bayne was very anxious to get money from that bank, and we could not help him any more.

167 Q. Can you say that you were not, shortly before the meeting you have spoken of at Huntington's house, endeavoring to make arrangements by which Bayne & Co. could get some large sum of money?

A. I was not over anxious about the matter until I discovered that his failure would ruin the bank.

Q. When did you first find out that Bayne & Co.'s condition was so desperate?

A. A few days before the failure of the bank.

Q. How long after the interview at Huntington's house was it that the bank failed?

A. I cannot say.

Q. Before the meeting at Huntington's house, and at that time, did you regard the condition of Bayne & Co. as so precarious as to make you anxious to get money for them?

A. A very few days before that meeting, I did. I believed that after he got his money he would be able to pay; so much so that I did not draw my own deposit with him. The bank was then regarded as perfectly safe.

Q. At the time of the meeting at Huntington's house, then, the bank was not in need of money, but money was required for the use of Bayne & Co.?

A. Money was required, as Mr. Bayne owed the bank large amounts which he could not pay. The bank required more money to pro-

168 tect themselves, and in protecting themselves they had to protect Bayne & Co.

Q. Then it was understood all around at this meeting that the money was to go to the use of Bayne & Co.?

A. It was so agreed that night, and the places it was to go to. This arrangement was made with the bank to protect the bank.

Q. Had you not been passing back and forth from Baltimore to Washington, prior to the meeting at Huntington's house, in behalf of Bayne & Co., for the purpose of making arrangements for them to get money?

A. No, sir.

Q. How much money did you have on deposit with Bayne & Co. when they made their assignment?

A. Nearly ten thousand dollars.

Q. Are you interested in the result of this suit?

A. I am a preferred creditor of Bayne & Co.

Q. Are you preferred to the full extent of your balance?

A. I am.

Redirect by counsel for the defendants:

Q. Will you state for what services the three per cent. commission on deposits allowed you by the bank, of which you have spoken, was given?

A. For general services rendered for the benefit of the bank.

169 Q. After your application to Col. Paulding to increase his deposit on the Merchants' National Bank, of which you have spoken, and his refusal to do so, as testified to by you, did you approach him again upon that subject?

(Objected to as leading.)

A. I did not.

Q. Did anything further pass between Col. Pauling & yourself on that subject?

A. No, sir.

Q. Did you or not regard his refusal as definite and final?

(Objected so as leading and as asking the opinion of the witness.)

A. I regarded it as final.

Q. By whom was the deposit of $200,000 made by Col. Paulding in the Merchants' Nat. Bank on the 21st of April, 1866, procured?

A. I cannot say.

Q. Was it procured by you or, to your knowledge, by any other officer of the Merchants' National Bank, or by Mr. Huntington?

(Objected to as leading.)

A. It was not procured by me. I cannot say who procured it.

Q. When Mr. Huntington recommended or stated that he would recommend a transfer of funds to the Merchants' National Bank did he state what funds he would recommend to be transferred, or by

170 what person the transfer was to be made?

A. I do not recollect.

Q. Do you recollect whether he used the word "transfer," or what words he used, when he said that he would recommend relief to be given the bank, as already testified to by you?

A. I have no recollection of the words used by him.

Q. At what hour of the morning of the 21st of April, 1866, did you go to the First Nat. Bank?

A. About nine or ten o'clock.

Q. Will you state who went with you, and for what purpose you went there?

A. I went with Mr. Sherman, the cashier of the Merchants' National Bank, to see if we were to get the required amount of money.

Q. Did you find Mr. Huntington there?

(Objected to as leading.)

A. I don't think he was there when we first reached there.

Q. When did you first see Mr. Huntington on the morning of the 21st day of April, 1866?

A. About ten o'clock.

Q. Will you state, as well as you can recollect, all that passed between Mr. Huntington, Mr. Sherman, & yourself on that occasion?

(Objected to.)

171 A. I think that Mr. Huntington said that everything was arranged, and that we would get the money. He had a conversation with Mr. Sherman at one side which I did not hear.

Q. At what time did you go to Col. Paulding's office, and how came you to go there?

A. I think we directly from the First National Bank. I think Mr.

Sherman said, "Let's go down and see if the colonel has sent his deposit down."

Q. How came Mr. Sherman to make that remark?

A. I don't know.

Q. When did you first learn, and from whom, that Col. Paulding would transfer two hundred thousand dollars to the Merchants' Nat. Bank?

(Objected to as already fully answered.)

A. From the cashier of our bank; I can't state when.

OSCAR KING.

Subscribed and sworn to before me this 29th day of April, 1870.

JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of N. Y.

EXHIBIT A.

Bayne & Co., of Baltimore, and the Merchants' National Bank of Washington, D. C.

172 To the public:

It was my purpose and desire to publish the following communication immediately after the appearance of the report of the committee of the House of Representatives. Reasons, which are not now necessary to mention, rendered this step unadvisable. Those reasons exist no longer. I now submit this outline of my defence to the candid judgment of the community.

The connection of the house of Bayne and Company with the Merchants' Bank of Washington has given occasion, since the failure of the bank, to many and grave imputations upon my character.

As long as those imputations retained the form of slanderous rumors, originating in ignorance or malevolence, I was content to await the issue of a judicial inquiry for my vindication.

But the report of the committee of the House of Representatives charged with investigating the "facts and circumstances" connected with the failure of the bank, giving as it does an apparent official sanction to these aspersions, is calculated to do me an injury for which the tardy course of the law will afford no adequate remedy. I cannot, therefore, in justice to myself, and to others who, through me, are affected by this report, longer refrain from presenting to the public my answer to the supposed facts and inferences of the committee.

The report of the committee would make it appear that the affairs of the Merchants' National Bank were, in effect, under the control
173 of the house of Bayne & Company, and that they used the bank, its property and its deposits, for their own purposes.

The failure of the bank is attributed to the fact that Bayne & Co. had managed to get possession of nearly all its assets; nor is there wanting a strong intimation that this was effected by a combination, fraudulent in its nature and dishonest in its object, between the members of the firm and officers of the bank.

I know not what evidence was before the committee, but I will show that its conclusions are wholly erroneous, and to the last degree unjust to myself and to my firm. I shall state nothing that I am not prepared to substantiate by competent legal proof; and I am ready at all times to submit that proof to any who may please to examine it.

Before considering the specific charges, I will notice two misstate-

ments contained in the report, which serve to illustrate the degree of caution and desire to do justice which characterized the labors of the committee.

With a view to confirm the impression sought to be produced, that Bayne & Co. controlled the management of the bank, and to fix upon that firm the responsibility of its transactions, the committee reports that my brother, Mr. Wm. Bayne, was the first president, and that I was one of the directors of the bank. Both statements are untrue, as the records of the bank in the possession of the committee must have shown;
and these statements, therefore, so far as they are used to injure
174 those to whom they refer, must be regarded as fabricated evidence.

Mr. C. W. Boteler was the first president of the bank, and was succeeded by Mr. William Bayne, who did not become a stockholder until after the bank had received the certificate of its organization.

It is due to Mr. William Bayne to state that a very slight examination of the facts would have shown the committee that he was in no way connected with the house of Bayne & Co., and that the pecuniary difficulties which resulted in the failure of the bank and of the firm arose about seven months after he had ceased to be president of the former, he having resigned on the 30th of September, 1865.

I became a stockholder to the extent of two hundred shares after the bank had been organized, but I was never a director, and never took any part in its management.

As the whole capital of the bank consisted of two thousand shares, it requires what the late Mr. Benton would term "a robustious presumption" to attribute to me a controlling influence in the direction of its affairs.

I come now to the first charge made by the committee. After stating that the public money deposited in the bank amounted at the time of its failure to $766,572.10, the report proceeds as follows:

"At the time of the failure of the Merchants' National Bank, and for some time previously, the house of Bayne & Co., in Baltimore, was indebted to the bank for an amount very nearly equal to the amount
175 of public money deposited in the bank. This house was the principal debtor, and had almost all the available funds of the bank, without having given, or been required to give, any security whatever for their debt, which was represented by Mr. Huyck, the president of the bank, to have mainly originated in seven-thirty bonds of the United States, transmitted by the bank to Bayne & Co. The committee do not deem it necessary to go into the details of the testimony concerning the transactions of this bank, as the subject of its management is understood to be in the course of investigation by a judicial tribunal. They content themselves with the statement that all the testimony taken by them proves its management to have been in the highest degree illegal, improvident, reckless, and dishonest, and that the failure of the bank was caused by the extravagant and unreasonable credits allowed without security to Bayne & Co., of Baltimore, and that the failure of that firm necessarily involved that of the bank."

The meaning here plainly intended to be conveyed is that Bayne & Co. tried to get into their hands nearly all the available assets of the bank, including most of the public money held by it on deposit, and that the debt of the firm to the bank did not arise in the ordinary course of business. To illustrate the means supposed to have been used to obtain possession of the public money, the committee proceeds to give a minute account of the manner in which Col. Paulding, a paymaster in

the United States Army, was induced to deposit $200,000 in the bank a short time before its failure, nearly all of which it is said forth-
176 with passed into the hands of Bayne & Co. With reference to this transaction, as will be seen hereafter, the charge of criminal participation on the part of Bayne & Co. is directly made, and the reader is left to infer that they were equally guilty as to the other public money deposited in the bank.

I will now show upon what foundation this disgraceful imputation upon my character and that of my firm is given to the world.

INDEBTEDNESS OF BAYNE & CO. TO THE BANK.

The transactions between the Merchants' National Bank of Washington and Bayne & Co. began on the 17th of December, 1864, and continued until the failure of the firm. These transactions were very extensive, and represented by two accounts, known as the cash and the bond account. In the former were recorded the credits reciprocally given and received, and the balance of this account was sometimes in favor of the one party and sometimes of the other.

From July 14th to August 28th, 1865, the cash balance was in favor of Bayne & Co., reaching on the day last mentioned the large sum of $304,000. From September 1st to October 9th, 1865, it was in favor of the bank, but again passed to the side of Bayne & Co., and so remained until the 28th of October. During the month of November the cash balance was in favor of the bank, but from December 1st, 1865, to March 8th, 1866, it was in favor of the firm. From the last-men-
177 tioned date the cash balance continued against Bayne & Co. until the failure of the bank, at which time the total amount appearing against the firm was $290,394.26, which includes all that Bayne & Co. owed the bank, both on the cash and bond accounts. This balance, however, consists of two parts which must be considered separately.

On the 21st and 23rd April last, as will be more fully explained in the sequel, the bank loaned Bayne & Co. $150,000 for a specific purpose. The residue of the indebtedness of Bayne & Co., amounting to $140,394.26, accrued in the course of the ordinary transactions between the firm and the bank.

After receiving the loan of $150,000, Bayne & Co. transferred to the bank the following securities, not credited in the account, from which the above balance of $290,394.26 is taken:

On the 25th April they delivered to Mr. Huyck, president of the bank, 850 shares of the stock of the Washington, Georgetown and Alexandria Railroad Company, as will appear by the following receipt:

"Received of L. P. Bayne, eight hundred and fifty shares Washington, Alexandria and Georgetown Railroad stock.

"L. HUYCK,
"*President.*"

New York, April 25th, 1866.

On the 30th April they delivered to Mr. Sherman, cashier of the bank, 100 shares of bank stock, for which he gave the following receipt:

178 "MERCHANTS' NATIONAL BANK, U. S. DEPOSITORY,
"*Washington, D. C., April* 30, 1866.

"I have received from Bayne & Co., through the hands of Mr. Wm. Bayne, certificate of stock No. 42, 100 shares Merchants' National Bank stock in name T. H. Osbourn.

"C. A. SHERMAN,
"*Cashier.*"

On the same day they delivered to the bank bonds of the Marietta and Cincinnati Railroad Company of the par value of $6,000, and notes of the Exchange Bank of Virginia to the amount of $5,965. The estimated value of these securities at the time they were transferred to the bank was $82,889.50, which reduces the indebtedness of Bayne & Co. to $207,504.76. This amount will be farther diminished by some small credits, but I assert that the total indebtedness of Bayne & Co. to the Merchants' National Bank at the time of its failure did not exeeed $207,900.

It will be seen that of the large sum of $766,600, alleged by the committee to have been lost by the bank, not more than $207,000 can be accounted for by the indebtedness of Bayne & Co., and that the disappearance of more than half a million of dollars remains to be explained.

It is not true, therefore, in any just sense, that the failure of the bank was caused by that of Bayne & Co. The failure of the latter was
179 no doubt one of the circumstances that brought to light the insolvency of the former, but that insolvency was clearly not due exclusively or even chiefly "to the extravagant and unreasonable credits allowed without security to Bayne & Co."

The committee could only give color to this charge by assuming that the indebtedness of Bayne & Co. amounted to the large sum mentioned in the report, and its conclusions, set forth with such show of confidence, are wholly unsupported by the facts.

That part of the indebtedness which accrued in the course of the ordinary transactions between the bank and the firm, amounting to $140,894.26, is not greater than the magnitude of those transactions would warrant, and is much less than the credits given and received by each party on many previous occasions. It would have been met by Bayne & Co. as they had met much larger balances, had not their effort to protect their credit been frustrated in the manner hereafter described. It is believed that the bank will receive nearly or quite all of it under the provisions of the assignment of Bayne & Co.

The residue of the debt, amounting to $150,000, resulted from an advance made by the bank to save the credit of Bayne and Co., as will be fully explained in the sequel, and it will be seen that this advance was covered by assets transferred by the firm to the bank.

COL. PAULDING'S DEPOSIT.

It is charged in substance that a fraudulent combination was
180 entered into by myself and others to obtain $200,000 from Col. Paulding, a paymaster in the United States Army. The report of the committee sums up the evidence on this subject in the following language:

"The intimate relations between Paulding, Bayne, and King; their mutual responsibility on the paymaster's official bond; the fact that King received interest on Paulding's deposits; L. P. Bayne's letter to Huyck, and Huyck's evident abuse of his position as president of the bank, all indicate plainly that the object was to obtain possession of that amount of public money from Col. Paulding."

I shall notice successively the circumstances by which the committee seeks to support this charge, so far as I am concerned, and show that it rests entirely upon ignorance of some facts and the perversion of others.

It has been seen that the committee was in error as to my having been a director of the bank, which is one of the circumstances relied

upon to connect me with the affairs of that association and establish my "intimate connection with Mr. King."

The alleged intimacy between myself and Col. Paulding is purely imaginary. My acquaintance with that gentleman, and my becoming one of his sureties, was entirely the result of accident.

Mr. Oscar King applied to me about a year before the failure of the bank to become one of Col. Paulding's sureties, under the following circumstances:

181 Mr. King stated that Col. Paulding had stopped in Baltimore on his way to spend a short leave of absence with his friends in New York, expecting to meet here a Mr. Gardiner, who was to be one of his sureties. Mr. Gardiner had not arrived, and Mr. King said that as it would be very inconvenient for Col. Paulding to wait for him, he presumed upon his own acquaintance with me to ask me to take Mr. Gardiner's place. He represented Col. Paulding as an officer of high character, who had faithfully disbursed many millions for the Government, and assured me that I would incur no risk. My acquaintance with Mr. King, who kept a valuable account with my firm, led me to confide in his representations, and I acceded to his request.

This was the origin and extent of my "intimate connection" with Col. Paulding, with whom I had no previous acquaintance, or any communication subsequently until after the failure of the bank.

I come now to my letter to Mr. Huyck, which is the next and principal link in the committee's chain of evidence.

The apparent obscurity of this letter, which induced the committee to regard it as evidence of a dishonest purpose on my part, will be easily removed by an explination of the circumstances under which it was written and the facts to which it refers. It is as follows:

"BANKING OFFICE OF BAYNE & CO.,
"*Baltimore, April* 13, 1866.

182 "MY DEAR SIR: I have done all that I could do to send S. currency. Honeywell was out till 4 p. m. but could not get it. I feel bad about it, for I fear that it will greatly inconvenience him. I go to Washington to-night to arrange with S. about matters of business. K. says he can arrange to get $150,000 from a party in Washington, to be deposited in your bank, provided you will immediately turn the same over into my hands. If this is done, all I can say is, that as much of it as I can possibly save for you from use I will do. K. & B. are at work in some important matters, and I think in the operation I can manage to save for you one-half of what is gotten. This had better be saved than lost at such a time as this. K. goes down to-morrow to get as much of it as he can, and he will want to bring it over with him.

"I advise you to telegraph to Sherman to comply with Bayne's request, and send all that K. gets to B. All right.

"L. P. BAYNE.

"L. HUYCK, *New York.*"

Some days prior to the date of this letter I had deemed it my duty to communicate to several of my friends the financial difficulties of my firm, and advise with them as to the best course to be pursued. Among those whom I consulted, were Mr. A. Vance Brown, president of the National Exchange Bank of Richmond, and Mr. Oscar King, a director of the Merchants' National Bank. I spoke to both these gentlemen without reserve as to our embarrassments, which I informed them

183 were occasioned chiefly by a floating debt of about $150,000.

In reply to a question of Mr. Brown, I expressed the belief that if my firm could obtain assistance to the amount of its floating debt, it would surmount its difficulties and protect its credit.

Mr. Brown, after taking some time for reflection, appreciating, no doubt, the consequences that would ensue from the failure of Bayne & Co. to the Merchants' National Bank as well as to other associations of the same kind, proffered his services, in conjunction with Mr. King, to procure the required assistance.

In arranging for the relief of the bank, which it now appears was in great financial embarrassment on its own account, it was clearly seen that unless the credit of Bayne & Co. could be protected, the bank could not be effectually aided. It was then stipulated that whatever funds might be procured by the joint efforts of Messrs. King & Brown should be applied, to the extent of at least $150,000, to the use of my firm. Mr. Brown stated that to accomplish the purpose he had in view the credit of a bank would be necessary, but I informed him that the banks of Baltimore understood our condition, and that they had already assisted us to such an extent that I could not ask them to do more. Unless the arrangement could be effected through the Merchants' National Bank I told him that nothing could be done. Messrs. Brown and King agreed to make the effort, and Mr. Huyck was duly ap-
184 prised of what had occurred. I did not then know by what means Messrs. Brown and King expected to obtain the money for the aid of my firm and of the bank; but, as I subsequently ascertained, they depended upon the assistance of some of the "national banks," especially such of them as were authorized to receive public money on deposit.

The interest which all these associations had in sustaining the credit of one of their number, it was believed, would induce them to unite with the bank of which Mr. Brown was president in furnishing aid to the Mrchants' National Bank. It was not intended to apply to any Government officer.

On the day the letter was written, April 13th, I learned from Mr. King that he expected to obtain $150,000 to be deposited in the Merchants' Bank. This money was part of what Messrs. Brown and King had agreed to endeavor to raise, but it was only sufficient to meet the wants of my firm. It was necessary, therefor', to obtain the consent of the Merchants' National Bank to the transfer of this sum to Bayne & Co., and to effect this I determined to proceed to Washington that evening and confer with Mr. Sherman. As Mr. Huyck was then in New York, I supposed that his authority would be necessary to enable Mr. Sherman to consent to the proposed arrangement, and the object of my letter to the latter was to obtain his concurrence, and have him notify Mr. Sherman. With this explanation, I think the letter can be
185 easily understood.

After alluding to a matter not connected with the present subject, I inform Mr. Huyck that I am about to go to Washington to confer with Mr. Sherman about matters of business, meaning the arrangement for transferring to Bayne & Co. the money which Mr. King expected to obtain. I then state, that Mr. King thought he could procure $150,000 from a party in Washington, to be deposited in the bank, provided Mr. Huyck will immediately turn it over to me. This is only repeating the arrangement under which Messrs. Brown & King had agreed to give them aid, as already explained.

To induce Mr. Huyck to give his consent to this proposition, I promise that I will endeavor to spare as much of the money as possible from

the use of Bayne & Co. for that of the bank, and to satisfy him that the money alluded to in the letter was not all the assistance we could depend upon, I mention that "K. (King) and B. (Brown) are at work upon some important matters, and I think in the operation I can manage to save for you one-half of what is gotten." The meaning of this is that I expected that Messrs. Brown and King would succeed in obtaining a sufficient amount to enable me, after using what the necessities of Bayne & Co. might require, to leave one-half for the use of the bank. I urge this expectation as a reason for Mr. Huyck's consent to my receiving the whole of what Mr. King would procure the next day.

186 Mr. Huyck's refusal would frustrate the proposed arrangement for obtaining the money, which could only be safely effected by affording relief to Bayne & Co. I suggest to him that he had better acquiesce, and thus receive such measure of relief as the plan would afford the bank, than lose it altogether by withholding his assent. In the language of the letter, "This had better be saved than lost at such a time as this."

The letter then states that Mr. King "will go to Washington the next day to get as much of the money as he can, and will want to bring it back with him." As I expected to apply in person to Mr. Sherman for his consent, I request Mr. Huyck to telegraph him "to comply with Bayne's (my) request, and send all that K. (King) gets to B.," (myself.)

I did visit Washington and saw Mr. Boteler, the vice-president, and Mr. Sherman, the cashier, of the bank, with whom I conferred freely about the condition of affairs, and the result was that it was agreed that I should have one-half of the money that might be obtained, the amount to be received by me not to exceed $150,000.

It will then be seen that my letter to Mr. Huyck, to which so much importance is attached by the committee, as evidence of my complicity in an alleged plot to get "possession of public money from Col. Paulding," had no reference to that honorable and gallant officer, or to the transaction in which he was subsequently concerned. It referred

187 entirely to the arrangement which Messrs. Brown and King proposed to make with some of the national banks for the relief of the Merchants' National Bank, and as incidental to that of Bayne & Co.

This arrangement was not consum'ated, however. Mr. Brown was called away by business, no money was obtained, and my letter to Mr. Huyck ceased to be of any consequence.

THE LOAN OF $150,000.

About a week after the letter was written I was summoned to Washington to confer with Mr. Huntington, cashier of the First National Bank of Washington, and others, with reference to the affairs of the bank, and Bayne & Co.

An interview took place at the house of Mr. Huntington, at which were present that gentleman, Mr. Sherman, Mr. Boteler, Mr. King, and myself.

The substance of our conversation was as follows: Mr. Huntington stated that he had been "requested by a gentleman of high official position to examine into the affairs of the Merchants' Bank, and, if he deemed it prudent, to recommend such relief as it might require." He said that he had made the examination and found the affairs of the bank in a satisfactory condition, "except that it had too much money in the hands of Bayne & Co." He then asked what amount would be necessary to enable Bayne & Co. to surmount their difficulties. I replied, in sub-

stance, as I had previously stated to Mr. Brown, that I believed if we could borrow $150,000 we could protect our credit and save our creditors.

188 Mr. Huntington then enquired what securities we could furnish, and was informed that the debt for which it was necessary to provide immediately was a floating debt, a portion of which was secured by stock of the Washington, Georgetown and Alexandria Railroad Company, and a portion by bank-stock, but that some of it was secured by no collaterals; that I could release the securities above mentioned, but could give no other. After some further conversation it was agreed that Bayne & Co. should receive the assistance for which I asked. But nothing was said by any one as to the source from which the money was to come, nor did I know until afterwards how it was obtained.

The assistance was given as agreed. Bayne & Co. received on the 21st of April $100,000, by a credit of $50,000 with Scott, Capron & Co., of New York, and another of like amount with Hoyt, Anthony, Douglass & Co., of New York, and on the 23d they received through Mr. King a check on New York for $50,000, making in all $150,000, the amount of assistance which it had been agreed they should have. The credits in New York and the check came from the First National Bank of Washington, through the Merchants' National Bank.

It is not true, as stated by the committee, that Bayne & Co. received more than $150,000. The sum of $30,000, which is said, on the authority of Mr. Sherman, to have been used in making good checks of the Merchants' Bank given the *the* day before to Bayne & Co., was really applied to the payment of checks of the bank then under protest

189 in New York, upon which the bank had obtained currency for its own use through my firm.

The fact that Bayne & Co. were embarrassed was well known to those by whom the advance was made, and their object was to relieve them from those embarrassments and thus save the credit of the Merchants' National Bank.

I did not promise that "a large amount of securities should be released and returned to the bank," as represented by the committee. I stated distinctly what securities I would be able to release by the use of the money, and those securities were in fact released and delivered to the bank, as the receipts of its officers already published show.

The following telegraphic correspondence removes all doubt on this subject:

"WASHINGTON, *April* 20, '66.

"L. P. BAYNE:

"If we give you hundred and fifty to-day what securities will it release?

"L. HUYCK."

Answer:

"APRIL 20, '66.

"To L. HUYCK:

"Railroad and bank stock.

"BAYNE."

It is said by the committee that Mr. Huyck claims the 850 shares of railroad stock as his private property. It is possible that they were so, but he had deposited them with my firm from which he had re-

190 ceived large advances on his individual account, and his receipt as president of the bank is a clear recognition of our right to

transfer our interest to the bank. But in fact Bayne & Co., after receiving the loan of $150,000, did pass to the bank assets sufficient to cover the whole amount.

Besides the securities I have previously mentioned as having been transferred to the bank, consisting of railroad-stock, bank-stock, railroad-bonds and Virginia bank notes, valued at $82,889.50, Bayne & Co. passed to the bank, on the 1st and 2nd of May, bills receivable to the amount of $79,398.86, making a total of $162,288.36 received by the bank after the loan of $150,000.

It is true that all these securities were not applied by Bayne & Co. specifically to the loan of $150,000, for they had no reason to make any distinction between that sum and their other indebtedness to the bank. But if there were any circumstances which rendered it peculiarly obligatory upon the bank to secure the loan of $150,000 it will be seen that it was provided with the means of doing so by Bayne & Co., and it will be found upon investigation that a sum nearly or quite equal to the loan was realised from these identical securities.

It is apparent from what I have said that Bayne and Company are free from any responsibility on account of the deposit made by Col. Paulding, who acted under the advice of others.

191 I maintain, then, with as much reasonableness might you leave out the word "not" from the ninth commandment, and assert that it teaches, "thou shalt bear false witness against thy neighbor," as to say that the honorable committee of Congress has evidenced that Bayne, Huyck, and King conspired to "obtain possession of public money from Col. Paulding."

The only responsibility, then, that can attach to Bayne & Co. arises from the statements made by me to Mr. Huntington and the officers of the Merchants' Bank, as to the condition of the affairs of my firm.

I believed then, and I believe now, that with the assistance for which I asked, there was a reasonable probability of protecting our credit. The value of our assets, and the arrangements made as to all of our obligations, except the floating debt which I wished to provide for, justified that belief on my part, as I am prepared to prove. Some of those assets, however, depreciated rapidly and unexpectedly. Their marketable value depended largely upon the credit of my firm, and our embarrassments becoming public, affected that value most seriously.

But the circumstances which rendered the advance of $150,000 unavailing, and compelled Bayne & Co. to succumb, was the failure of the bank to make good a promise made to me by its president.

192 Besides the floating debt I have refered to, there were outstanding, at the time the advance of $150,000 was made, certain drafts drawn by the bank and accepted by Bayne & Co. These drafts matured at different times between the 24th April and the 8th May, and amounted to $150,000. They had been discounted, and the proceeds had come, or should have come, to the use of the bank, and I had the assurance of Mr. Huyck that the bank would provide for their payment at maturity. It was only upon the assumption that this would be done that I deemed it practicable to save the credit of Bayne & Co. by the use of $150,000.

No provision was made for these acceptances by the bank, the floating debt of Bayne & Co. was at once nearly doubled, and the assistance they received became unavailing.

It only remains for me to add, that every dollar of the loan of $150,000 was scrupulously applied to the purposes for which it was made.

THE SPURIOUS RAILROAD STOCK.

The next charge made by the committee is as follows:

"Mr. Huyck was the treasurer of the Washington, Georgetown and Alexandria Railroad Company. He testifies that in February last, he issued to Bayne & Co. certificates for 2,850 shares of the stock of the company, the par value of which was $285,000, relying, as he says, upon the promise of Bayne & Co. to return him genuine certificates to replace them. The genuine stock has never been returned, and these
193 shares are therefore an overissue of the stock of that company."

It will be observed that this charge is not one of the subjects of the committee's investigation, which were "all the facts and circumstances connected with the failure of the Merchants' National Bank of Washington." It rests entirely upon the evidence of Mr. Huyck, whom the committee in another part of the report charge with having rendered a "false return under oath to the Comptroller of the Currency."

That the committee should have taken the pains to incorporate in its official report such a charge, supported by a witness whom they had already discredited, does not tend to inspire confidence in the candor, fairness, and impartiality of its investigation, which seems to have been conducted, so far as I am concerned, in a spirit nearly allied to that of the "attorney" who after a critical examination of the evidence indorsed upon the brief, "No case; abuse the plaintiff."

I will now show that it is nothing less than a wanton and gratuitous calumny.

Mr. Huyck delivered to Bayne & Co., in the month of February, 1866, only 1,000 shares of the stock of the Washington, Georgetown and Alexandria Railroad Company. These shares were received on the 13th February. On the 3rd March, he delivered to Bayne & Co. 470 shares of the same stock, and on the 10th 200 shares. The certificates
194 of this stock were not issued in the names of Bayne & Co., who received them as genuine. They had previously received considerable amounts of the same stock from Mr. Huyck, about which no question was ever raised.

That Mr. Huyck did not disclose to Bayne & Co. the fact that this stock was an overissue is made sufficiently clear by the following letter from a gentleman of high character, having the confidence of Mr. Huyck as well as myself:

"NEW YORK, *June 10th*, 1866.

"L. P. BAYNE, Esq., *Baltimore:*

"MY DEAR SIR: In reply to your inquiries of the 8th inst., I have to say that in a conversation with L. Huyck a short time ago, in reference to the reported overissue of the Washington and Alexandria Railroad stock, (knowing that you had borrowed quite a large amount of money on said stock,) I asked him if he thought you had any knowledge or means of knowing of said overissue, and he replied promptly and emphatically that you had not, and he promised to write a letter to * * * * with whom you had some transactions with this stock, exculpating you from all suspicion even, in reference to the matter, should any question arise about it. I am happy to say, however, that that house, and your other friends here, have too high an appreciation of your integrity and honor to impute any such knowledge or transaction to you.

"Yours truly, &c.,

195 (Signed) "J. G. McPHEETERS."

In view of all the facts and circumstances herein stated, is it not manifest, therefore, that Mr. Huyck could have made no such agreement for the return of "genuine stock" in its place, as the committee represents?

Mr. Huyck's testimony, however, before the committee, is that he made the "overissue," relying upon Bayne & Co. to return him genuine certificates to replace them. Query. Why the necessity for such a change? Presuming that Mr. Huyck intended to cancel the "genuine certificates," it is plain that no benefit could arise either to him or to Bayne & Co. by such a substitution. The most common business mind will see at once the absurdity of such a proposition, unless a fraud was contemplated, with which I do not charge Mr. Huyck.

MR. J. B. STEWART'S RAILROAD BONDS AND STOCK.

Mr. J. B. Stewart testified before the committee that he "deposited 950 shares of the stock of the Washington, Georgetown and Alexandria Railroad Company with the Merchants' National Bank as collateral security for any money he might owe." Also that he made a "special deposit for safe keeping in the bank of $169,000 in bonds of the Union Pacific Railroad Company." In March, 1866, he discovered that these bonds had been sent by Mr. Huyck, the president of the bank, to Messrs. Bayne & Co., and by them used as collateral security for loans obtained in various banks in Baltimore, without his knowledge or authority.

196 He also discovered that the railroad stock had been disposed of in the same way. The facts with reference to these bonds and the stock, so far as Bayne & Co. were concerned, were these:

On the 7th December, 1865, Mr. Huyck, as president of the bank, delivered to Bayne & Co. bonds of the Union Pacific Railroad Company of the value, at par, of $134,000, of which $24,000 were afterward withdrawn. Bayne & Co. acknowledged the receipt of the bonds in a letter to Mr. Sherman, cashier of the bank, of which I subjoin a copy.

BALTIMORE, *December* 8, 1865.

"C. A. SHERMAN, *Cashier, Washington, D. C.:*

"DEAR SIR: We have received from Mr. L. Huyck, pres't:

90 Union Pacific Railway Co. 1st mtg. construction b'ds.		
Temporary Nos. 1, @ 90	$1,000 each.	
44 " " 5½, @ 615	1,000 "	
"Also check No. 4512, Ocean Nat'n		21,000
" " 4513, Suit, Gray & Co		30,000
		$51,000
And have delivered to Mr. Huyck, currency		$51,000

which we have charged to your account.

"Respectfully,

(Signed) "BAYNE & CO.,

"*Chase, Clerk.*"

We did not know, and had no reason to suspect, nor do we now doubt that President Huyck had a right to control and use the bonds, and the letter to Mr. Sherman shows that we regarded them as the property of the bank.

197 Our books show that the following was the condition of the cash account of the bank at the time the bonds were lodged with us:

1865.			
Dec. 7.	Cash balance due Bayne & Co. by the Merchants' Bank		$77,387 32
"	Delivered to L. Huyck, president, in currency	51,000 00	
"	Remittance to New York	40,000 00	
"	Checks and collections paid	969 36	
			$91,969 36
			$119,356 68

CREDIT.

Dec. 7.	Checks on New York	$51,000 00	
8.	Remittances	11,509 76	
"	Collections	1,213 50	
			63,723 26
	Balance due Bayne & Co.		$105,733 33
	Bills held, but not passed to our credit, about		15,000 00
			$120,733 33

The calls of the bank were sudden and large. We were ordered daily, by telegraph, and generally at a late hour, to put funds to its credit in New York or Philadelphia, or to forward currency to Washington, and it was necessary, in order to meet such demands, to hypothecate, and keep hypothecated, any securities the bank lodged with us. It was for this purpose they were placed in our hands, and the right to use them was not at any time called in question.

198 As to the railroad stock, I cannot say whether Bayne & Co. ever received it, or, if they did, when it came into their possession. In the course of their dealings with the bank and Mr. Huyck, they received at various times considerable amounts of this stock, and it is possible that the shares now claimed by Mr. Stewart may have been a part. But Bayne & Co. had no means of knowing who was the owner of the different certificates they received. They always came to them in a form to pass by mere delivery, and they never thought of inquiring into the right of those from whom they were received; they took them in the ordinary course of business, as thousands of shares of stock are taken by bankers and brokers every day.

I know nothing of the relations between Messrs. Stewart and Huyck, but the latter defends his use of both stock and bonds, upon the ground that he held them as security for large advances to Mr. Stewart, and it will be observed that Mr. Stewart, in his testimony before the committee, admits that he was "indebted to the bank," and that as far back as the month of March he "called for the bonds, and Mr. Huyck refused to deliver them."

It was on the 3d of April, 1866, when I was first apprised by Mr. Stewart himself that he claimed the bonds as his own property; prior to that Mr. Stewart's name was mentioned only in connection with the bonds as authority that they were good, and that they were to be exchanged at an early day for Government bonds.

199 I have thus answered the charges of the committee as fully as the nature of this communication will permit. I have showed that

Bayne & Co. owed the Merchants' National Bank, at the time of its failure, $207,000, instead of more than $700,000, as represented in the report, and that their indebtedness did not cause the insolvency of the bank. I have shown that Bayne & Co. were in no way instrumental in procuring the deposit of public money made by Col. Paulding, and that the part of that deposit which came into their hands, amounting to $150,000, was advanced by the bank to protect the credit of the firm, and thus secure its own debt.

It has been seen that this advance was made with *with* knowledge of the embarrassments of Bayne & Co., and that its object was frustrated by the failure of the bank to make good the promise given by its president to provide for the outstanding acceptances of the firm. And it has also been seen that in a few days after receiving the loan, Bayne & Co. provided the bank with assets, from which it appears that money was actually realized nearly or quite to the whole amount of the $150,000 loaned.

The charge of participation in the overissue of the stock of the Washington, Georgetown and Alexandria Railroad Company, and in the alleged misapplication of the securities of Mr. J. B. Stewart, has also been fully met.

It is impossible to present here all the proofs of what I have stated. I am prepared to submit those proofs to the most rigorous scru-
200 tiny, and to leave the issues between myself and the committee to abide the result.

I cannot close without a brief allusion to the circumstances attending the failure of Bayne & Co., which have been grossly misrepresented and misunderstood.

The close of the late war found that firm with abundant means and unquestioned credit, engaged in an extensive and prosperous business.

The return of peace was attended with consequences to the business of the country and the values of all kinds of securities which no sagacity could foresee.

Large and unlooked-for fluctuations in the stock-market swept away fortunes in a day, and set the usual precautions of brokers at naught.

Those only were secure whose affairs permitted them to withdraw from the danger until business had resumed its wonted channels.

But it was impracticable for Bayne & Co. to bring to an immediate conclusion the large and varied transactions in which the financial disturbance found them engaged. There was no retreat for them, and they had to provide as best they could against the perils that surrounded them.

No honorable effort was spared to avert disaster; no precaution was neglected.

From the nature of their business, they were responsible for the losses sustained by those for whom they acted, and they met that re-
201 sponsibility to the extent of more than six hundred thousand dollars, for which they have not been re-imbursed.

They were finally obliged to yield, and with failure came its usual attendants, suspicion, abuse, and misrepresentation. The complaints of creditors, natural as it may be, but often unjust, were exag'erated by the malignity of personal enemies and the rancor of unscrupulous party prejudice, until the community was filled with all kinds of misrepresentation and slander.

I select a few of these calumnies to illustrate their general character.

It has been currently reported that I, or some member of our firm, withdrew money from the house of Scott, Capron & Co., of New York,

which rightfully belonged to the assignees of Bayne & Co. The assignment was made on May 5th, 1866.

The following letter is a complete refutation of this misstatement:

"NEW YORK, *June 21st*, 1866.

"Mr. L. P. BAYNE:

"DEAR SIR: In answer to your question as to whether eight thousand dollars, or any amount of money, was drawn from our house by any member of Bayne & Co., or upon their order, on the eighth of May last, we have to say the account of Bayne & Co. on our books was closed on 28th April, since which no transactions have taken place with you or your firm.

"Very respectfully,

202 "SCOTT, CAPRON & CO."

ROBERT BOLLING.

I have been charged, upon the authority of Robert B. Bolling, esq., of Virginia, with having misused a large amount of his securities.

The facts of Bayne & Co.'s transactions with this gentleman are as follows:

On February 15th, 1866, we loaned to Bolling $20,000, for ninety days, at seven per cent. interest, upon his own note for that amount and 40,000 Virginia coupon bonds, worth then—

In the market about	62	$20,000
Less 2 years' coupons	12	
10,000 North Co. coupons	82	7,000
Less 2 years' coupons	12	

Thus leaving a balance due him on that transaction of $7,000. He also has to his credit a cash balance of $1,057.30. To restore to us the money loaned to Bolling, we used the bonds, along with other securities. It was found to be impossible to withdraw them without retiring the whole loan or loans, which in our then crippled condition could not be done. His note, which has matured, is still in our possession, having never passed out of our hands, as has been alleged, and is not held against him. It was cancelled in his presence and that of A. J. Albert, esq. The insignificant loss sustained by Bolling was caused by
203 the misfortune and not by the fault of the firm. I once served Mr. Bolling when it was thought I jeopardized both my liberty and my property. In the time of this my financial trial and distress, he rewards me with calumny and detraction. He has appealed to the law, however, and I forbear further comment.

BISHOP WILMER—ELECT.

Bishop Wilmer lodged with us certain securities as a basis of credit, and my transactions with him have been constantly stigmatized as dishonest and unprincipled in the extreme. On this subject I will let the good bishop speak for himself:

"ALBEMARLE COUNTY, VIRGINIA, *June 7th*, 1866.

"MY DEAR SIR: I write this to give my sympathy with you under the heavy calamity which has so unexpectedly fallen upon your house. More from a generous desire to serve others than from any conscious

greed of wealth, you have been involved in this misfortune. None has suffered more unexpectedly than I have, but none can be more ready to testify to the earnestness of your struggles to do right. Your heroic resistance to all the seductions of self-interest, your abnegation of the right of your own family for the vindication of their honor and yours, and, best of all, your intense solicitude, inseparable from religious sincerity, that our holy faith should suffer no reproach from any fault of yours. Contrary to the rash judgments of the public, I do honestly acquit you of any purpose to do me a wrong, and in proof of this unwaver-
204 ing confidence, I shall not hesitate, when the opportunity occurs, to entrust any pecuniary interest of my own to your honor and your discretion; the first still pure, and the last matured and ripened under the discipline of a sharp experience.

"With my prayers for God's blessing upon you and yours, I remain, very sincerely, yours, &c.,

"J. P. B. WILMER.

"Mr. BAYNE.

"N. B.—I write this from no suggestion of others, but from a religious conviction of duty, which I owe to the sanctity of my profession as a minister of Jesus Christ.

"J. W."

But I will no longer weary the patience of the reader. There is not one of the many reports sedulously and maliciously circulated to the prejudice of my firm which I am not prepared to brand as false and libellous before any jury in the land, and I pledge myself to do so whenever the opportunity shall occur.

It was my misfortune on a former occasion to fall into pecuniary difficulties like those which now oppress me. I had then, as now, to encounter the complaints of my creditors and the calumnies of my enemies. After years of patient toil I enjoyed the proud satisfaction of paying or securing every dollar that I owed, with interest, not excepting those debts which had ceased to be of legal obligation.

205 It shall be the aim of what remains to me of life to leave no debt of Bayne & Co. unpaid. That aim, with the blessing of God upon my labor, I trust to attain, despite the malicious efforts of my traducers.

L. P. BAYNE.

BALTIMORE, *Sept.*, 1866.

THE FAILURE OF L. P. BAYNE & CO.

[From the Baltimore American.]

The recent failure of L. P. Bayne, of this city, involving in utter ruin the Merchants' National Bank of Washington, one of the national depositories, is another evidence of the loose manner in which the question of loyalty and disloyalty has been regarded. Throughout the whole war Mr. Bayne has been prominent for disloyalty, and has been the leader of the clique in this city who devoted all their energies to the depreciation of the national credit and the enhancement of the price of gold. His office was the headquarters of the gold-gamblers, and the opinion of Mr. Bayne was regarded as not to be doubted or gainsayed. True he led many of them to losses and utter ruin, and notwithstanding his antecedents in connection with the firm of Bayne, Withers & Co., of Washington, and as one of the agents for the sale of the State stock of Virginia before the war, he was regarded by the sympathizers with the rebellion as a king of finance.

The Baltimore Gazette of yesterday undertakes to whitewash the
206 recent failure of the rebel banking-house of L. P. Bayne & Co.,
and innocently proclaims that the money of the firm was lost "in legitimate business." If this was the first financial operation of Mr. Bayne where a million of money has mysteriously disappeared, there might be some excuse for such a plea; but, unfortunately, it is not the first, or the second. If "legitimate business" consists in gold-gambling and depreciating the national credit during a war for the nation's existence, in foisting on innocent parties fancy stocks that are not worth the cost of engraving the certificates, then Messrs. Bayne & Co. have been engaged in a "legitimate business," but not otherwise. * * * * * * * *

The fact that Mr. Bayne has been one of the leaders of the disloyal faction of this city during the war, and has co-operated with the Gazette in its labors to the fullest extent that the free handling of many hundreds of thousands of Government funds would enable him, can be the only basis of this attempt to gloss over a transaction that can under no circumstances be classed with "legitimate business."

Mr. Bayne, the Gazette asserts, "had nothing to do with the establishment of the Merchants' National Bank," though we presume it will not dispute the fact that he has had a great deal to do with destroying it. Mr. Bayne's brother was cashier of the bank until a very recent period, when, doubtless perceiving that it was approaching its "legitimate" end, he retired. If he had nothing to do with establishing the
bank, he must have mesmerized its directors and officers to the
207 extent of enabling him to obtain full control of its vaults. If the
getting up of bogus banks and the swindling of innocent noteholders and depositors is a "legitimate business," then the present failure of Messrs. Bayne & Co. is deserving of the commisseration of the community.—(Baltimore American, May 8th and 9th.)

To the public:

The Baltimore American, with characteristic meanness and falsehood, has taken wanton and cowardly advantage of my present pecuniary embarrassment and distress, to assail my character and endeavor to array against me for my ruin all the prejudices of the bitterest personal and political animosity. I do not now propose to discuss its slanders at length, as I shall probably give Mr. Fulton an opportunity to establish the truth of what he has written, if he can, before a competent and impartial tribunal. But it is, at all events, due to myself and to my family and friends to say, in this public manner, that the statements of the American, in its editorial of Tuesday afternoon, entitled "The failure of L. P. Bayne & Co.," are basely false in every material respect. I say basely false, because the writer either knew their untruth, when he prepared them, or could have learned it by the simplest inquiry.

My brother was never cashier of the Merchants' National Bank, as the
American asserts. He was for some time its president, but re-
208 tired several months ago, when I became the purchaser of his
stock, for which I paid, as I did for my own, in money, dollar for dollar, as any other shareholder. Nor is it true, as the American, with great emphasis, has stated, that "for the purpose of getting control of the funds" of Paymaster Paulding, my brother had become security on his bond. My brother never was upon Col. Paulding's bond. I, myself, am one of his sureties, but I am at a loss to imagine in what manner I was enabled, by that fact, to obtain any control of the moneys of the Government in his hands, or how I am affected by it otherwise than by

being made responsible for any acts on his part which may have involved a dereliction of duty.

That some of his deposits were made in the Merchants' National Bank was simply the result of the act of Congress compelling him to leave his moneys with the depository on which he might receive a check for them. Whether the bank itself was a "bogus bank" as the American styles it, can be readily determined by any intelligent man, in view of the fact that it was organized in all respects in compliance with the act of Congress, upon Government securities deposited with the proper officer, and with all its capital fully paid in. I had no agency in getting it up, further than that of investing my means in its stock.

The further infamous imputation by Mr. Fulton, that this is
209 not the first or second "financial operation of Mr. Bayne, where a million of money has mysteriously disappeared," is worthy of a professional slanderer, whose very breath is a false witness against public integrity and private honor. The banking-house of Selden, Withers & Co., with which I was formerly connected, has long since paid or provided for the payment in full, principal and interest, of every one of its debts, and I know of but a single creditor—the State of Virginia—whose claim has not been satisfied, though the securities given to it were considered ample by me, and, I believe, by the officers of the State when transferred.

The mercantile firm of Bayne, Withers & Co., of which I was previously a member, has not a single creditor that I am aware of. All its liabilities were fully paid, principal and interest, and I do not believe I owe a single debt of any sort except those which are due by the house of Bayne & Co., whose recent failure has provoked the mendacity of the American. My individual debts, many of them long ago out of date, I paid as I became able from time to time, and I may be pardoned, I trust, for some pride in saying, that in cases where they had been compromised for less than their amount, I re-assumed and discharged the balance due, principal and interest.

I am happy to believe that the assets of the late firm, if discreetly managed, will extinguish a large part of its obligations, and I am willing that the question of my integrity shall rest upon the facts
210 which my books will disclose. Meanwhile I can only appeal to the good feeling and sense of justice of the community, from the outrage of such assaults as the American has seen fit to make on me, for the worst and vilest purposes. Those who know the career of Mr. Fulton can readily understand that a man may be prosperous, without decency, or truth, or honor. I hope they will recognize, on the other hand, the possibility of a man's being beggared by misfortunes or miscalculation, without being, of necessity, a scoundrel.

L. P. BAYNE.

BALTIMORE, *May 9th*, 1866.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James Betts Metcalf, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed Feb'y 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st,

1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify
211 that the reasons for taking the foregoing depositions is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said depcsition named, and that they and each of them live at a greater distance from the place of trial than one hundred miles.

I further certify that due notification of the time and place of taking the said depositions was made out and served on the adverse party, to be present at the taking of the depositions and to put interrogatories, if he or they might think fit, as appears by the admissions of the attorney and counsel for the said adverse party, endorsed upon said notice and hereto prefixed.

I further certify that on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy, I was attended by Richard T. Merrick, esq., of counsel for the complainant, and by Thomas W. Hall, jr., esq., & E. Louis Lowe, esq., of counsel for the defendants, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; and the depositions were by me reduced to writing, in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of depositing the same with my own hand in the U. S. P. O. in the city of
212 New York, addressed to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[SEAL.] JAMES BETTS METCALF,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

And afterwards, to wit, on the 21st day of June, in the year of our Lord 1872, the following agreement of counsel was filed in court here, to wit:

In the circuit court of the United States for the district of Maryland.

THE UNITED STATES
vs.
RIDDLE ET AL., TRUSTEES OF BAYNE ET AL.

It is agreed that the following papers be used at the trial of this cause, as if returned regularly under commission to take testi-
213 mony, viz: Account-current of Bayne & Co. with Merchants' National Bank of Washington City; account-current of Col. Paulding, paymaster U. S., with Merchants' Nat. Bank of Washington City; receiver's certificate as to assets of the bank, marked "No. 1;" circular-note from Paymaster-General, dated May 30, 1865; testimony of L. P.

Bayne & Oscar King, taken before court-martial in case of Paymaster Paulding. The last-mentioned testimony being introduced on the part of the U. S. to contradict (as far as it may avail therefore) the testimony of the said witnesses taken under commission in this case, & admitted for that purpose.

It is further admitted that the 1st National Bank of Washington City & the Merchants' National Bank of Washington City were both Government depositories at the time of the happening of the matters in controversy, duly designated as such by the Secretary of the Treasury, under the act of Congress.

S. T. WALLIS,
T. W. HALL, JR.,
For Respdts.
WM. M. MERRICK,
For Compts.

1866.							1866.						
Mar. 1	To rem. you chge. Feb'y 12			308			Mch. 1	By balance					51,515 39
	" L. H. N. Y. funds you charge Dec. 22, '65			50,000			"	" loan you cr. on 67,000, ba. notes, Feb. 21st			20,000		
	" depo. by L. H., Oct. 20			200,000				" drafts out			5,364 41		
	" 7-30s sent you per Scott			100,000									25,364 41
	" Miller, we chge., Feb'y 17			600				" ½ Treas'y note	110				50
					350,908								
2	" rem			250			2	" Merchants	112				500
	" do. Painter & Co			25,000			3	" T. P. Morgan	114				35 80
					25,250		5	" rem. to Ninth	116		20,000		
3	" rem	115			20,000			" " " " 3d			15,000		
6	" 6,012 on Ninth	119		13,500									35,000
	" 6,013 on Ninth			11,600			6	" Treebener	118		1,200		
					25,100			Less			1 20		
	" rem	"			20,000								1,198 80
8	" draft for Citizens'	125		50,408 80			7	" rem. 9th Natl	122				20,000
	" draft			10,012 50			9	" rem. to Ninth	126				20,000
	" 342 same		E.	00			12	" paid Citizens' Natl	130				25,408 80
	" draft			10,012 50			"	" Union Bank					100,000
	" exchange on 20,000			20			13	" over ch., L. Stow	132				00
	" rem			11,495 61			14	" pro. fees, Gibson	134				2 30
					81,949 41		17	" currency to Richmond	142				5,000
9	" rem. to Painter & Co	127			25,000		19	" Riggs & Co	144				15 34
215 12	" rem. S. B. & Co	131		12,000			20	" rem. Suit, Bingham & Co	146		35,000		
	" rem			20,000				" 6 219			5,000		
					32,000								40,000
	" pay I. W. Guest, cash	131		25,000			21	" John Lane	148		110 95		
	" cash to selves			25,000				" I. W. Van Hook			25		
					50,000								135 95
15	" rem	138			5,000		22	" depo. by Hoyt A. & Co., with 9th Natl	151		10,000		
22	" depos. by Hoyt, A. & Co., C. H. Stewart				10,000			" rem. to Ninth			15,000		
23	" 6,162	153			50								25,000
24	" 6,158	155			50		23	" H. S. Benson	152				89 70
26	" chs. N. Y. for currency	155			15,000		27	" currency per express	156				15,000
28	" rem. Hoyt, A. D., & Co	158			5,000		28	" 6,327	158		1,631 34		
29	" 6,337 Ocean	161		5,000				" 39			42		
	" 6,342 same			5,000									1,673 34
	" 6 343 same			5,000				" R. Fowler & Co. 700, less 70			699 30		
					15,000			" currency per express			5,000		
April 19.	" int. for March	197			94 31								5,699 30
	" depo. Hoyt A. Douglass & Co., you cr. Mch. 13			10,350			March 30	" 6,358	162				173 65
							"	" E. Lowe	162		121 83		
	" loan you cr. on bank-notes, Feb'y 21st			20,000				" currency per Hough			15,000		
	" Union Bank we credit Mch. 12th			100,000				" disct. N. Y. drafts			5		
	" drafts out												15,126 83
216	1,939 81						31	" 6,373	164		30		
	6,373 30							" 86			510 32		
	86 510.32			621 32									540 32
					130,971 32		April 19	" pro. on our draft	196				1 23

										" er. we ch. 2 dfts., Mch. 8			25 00
										" L. H. N. Y. funds you ch , December 22		50,000	
										" depo., L. H., Oct. 20		200,000	
										" 7-30s. per Scott		100,000	
										" Miller, we chge. Feb'y 17th		600	
										" draft. for Citizens' we charge Mar. 8th		50,408 80	
										" exchange on 20,000, we ch. Mch. 8th		20	
										" rem. Suit, B. & Co., we chge. Mch. 12th		12,000	
										" Douglass you chge. in rem. Mch. 20, not due		39 26	
													413,068 06
										" balance			10,748 82
													811,373 04
1866.													
April	1	To balance					10,748 82	April	1	" depo. Hoyt A. Douglass & Co., you cr. Mch. 13th		10,350	
	"	" L. H. N. Y. funds you charge Dec. 22, '65			50,000					" loan you cr. on bank notes, Feb'y 21		20,000	
		" depo. L. H., October 20th			200,000					" Union Bank we cr., Mar. 12th		100,000	
		" 7-30s per Scott			100,000					" drafts out		621 32	
		" Miller we chge. Feb'y 17th			600								130,971 31
		" draft for Citizens' we chge. March 8th			50,408 80				2	" 6,399	166	83 31	
		" exchange on 20,000 we charge March 8th			20					" 6,405		423 42	
													506 73
									3	" 19	168	39 56	
										" 22		210	
										" 3		1,333 69	
217		" rem. Suit, B., & Co. we charge March 12th.			12,000					" 4		1,333 69	
		" Douglass you charge in rem. Mch. 20th, not due.			39 26								2,916 94
							413,068 06		4	" O. A. Stevens, sup	170	150	
Ap'l	2	" rem	167				50,000			" currency of L. Johnson & Co		5,000	
	3	" 6423, cancelled	169				1,333 69			" 6436		49 44	
	4	" 6433, on Ocean	171		5,000					" 7		115 25	
		" 6434, same			5,000					" 41		484 07	
							10,000			" 2		95 95	
													5,894 71
	5	" 6466, same			5,000				5	" J. J. Elliott, 500 less 50	172	499 50	
		" 6467, same			5,000					" currency		5,000	
		" 6468, same			5,000					" 6454		2,333 65	
		" 6469, same			10,000					" 63		18	
							25,000						5,751 15
		Folio	67						6	" 70	174	25	
										" 82		788 30	
													813 30
									7	" currency	176	20,000	
										" disct. N.Y. drafts		15	
										" currency per express		5,000	
										Folio.	67	25,015	
1866.								April	7	" 6495	176	10	
April	7	To 6258	177		140					" 6		1,200	
		" 6510, on N. Y			30,000					" 6502		2,377 69	
		" 6511, on N. Y			20,000					" 6		500	

Bayne & Company—Continued.

1866.						1866.					
	To remittance			21,000			By 7			4,554	
April 9	" 6262	179		100	71,140	April 9	" currency per Scott	178		20,000	33,656 69
	" 6521 on N. Y			5,000			" 6519			862 04	
	" 2, same			10,000		10	" exchange N. Y. drafts	180		17 50	20,862 04
218	" 3, same			10,000			" currency per express			5,000	
10	" 6288				25,100	11	" currency	182		20,000	5,017 50
11	" depo. Hoyt, A. D., & Co	183		20,000	10,000		" ch. favor Ocean Nat'l			35,000	
	" depo., Suit			15,000			" depo. U. Nat'l, Phil			7,000	
	" 4 ch'ks, N. Y., for c'y	183		20,000	35,000		" 6548			50	
	" check to Riddle			25,000			" 59			479 74	
12	" rem				45,000		" 62			46 55	
13	" rem. to Paurter & Co				20	12	currency per express, 11	184		10,000	62,576 29
	" 6585, cancelled			25,000			" 6570			420 29	
				50		"	" rem. to Ocean	"			10,420 29
14	" 6589, on N. Y	189		10,000	25,050	13	" 6585	186			20,000
	" 6590 " same			10,000		14	" handed Scott	188			50
	" 6591 " same			10,000		16	" depo. Ocean	189		15,000	5
	" rem			20 11			" 6588 on Ocean ret'd			15,000	
14	" 7-30 bonds	189			30,020 11		" currency			10,000	
17	" 6604, on Ocean, 1,400	193		10,000	4,000		" 6605			100	
	" 6629, same			10,000			" 9			62 10	
	" 6630, same			10,000			" 10			12 93	
	" 6631, same			5,000			" 23			1,797 07	
	" 6632, same			5,000		17	" Rogers on 1st Nat'l	192		125	41,972 10
18	" 6649, same			5,000	40,000		" do. do.			100	
	" 6650, same			5,000			" Gloriens			28 97	
	" 6651, same			5,000			" over ch. rem. Panter 13th			10,000	
	" 6652, same			5,000			" currency per Scott			15,000	
219 19	" int. per stat'l on 304,000, 7-30	197		7,996 43	20,000		" 6634			25	
	" 5,000 U. S. 5-20's, @ 104½			5,206 25			" 5			40	
	" rem. J. C. Clapp & Son			15,000			" 8			135 70	
	" 6664, N. York			10,000			" 42			100	
	" 6665, N. York			5,000		18	" currency per Scott	194		30,000	25,554 67
20	" rem. by 1st Nat'l, Wash., to Hoyt, A. D., & Co.	200		50,000	43,202 68		" 6645			1,349 75	
	" rem. by 1st Nat'l, Wash., to Scott, Capron & Co.			50,000			" 56			92 50	
	" given O. King, 1st Nat'l, check on N. York.			50,000			" 9			487 25	
					150,000	19	" currency per Scott	196		12,000	31 929 50
							" 6673			162 58	
							" 4			26 75	
											12,189 33

20	" 1350, Jno. Douglass		198	16 25		
	" Rittenhouse, F., & Co			100		
	" currency			10,000		
	" 6682			1,393		
21	" 98		200			11,509 25
23	" Nat'l B'k Rep'b		202	500		500
	" B'k of Wash			41		
				541		
	Less			54		
	Folio		68			540 46

COL. E. E. PAULDING, PAYMASTER.

572.									
1865.									
Oct.	31	To check		513			1865.		
Nov.	7	" do.		527		20,000	Oct. 12	By cash, 476	250,000
	16	" do.	(4)	549		100,000	" 30	" do. 510	320,000
	"	" do.	(2)	549		80,000	Nov. 15	" do. 544	300,000
	17	" do.		551		15,000	" 20	" do. 556	8,000
	20	" do.		557		10,000	Dec. 14	" do. 628	160,000
	21	" do.		561		100,000	" 18	" do. 638	25,000
	22	" do.	(2)	563		25,000	" 28	" check on Norfolk, 662	4,950
	23	" do.		567		80,000	1866.		
1866.						448,000	Jan'y 4	" cash, 680	10,000
Feb'y	27	" do.		35			" 6	" do. 686	100,000
March	31	" do.		121		25,000	" 25	" do. 740	50,000
April	5	" do.		137		20,000	Feb'y 14	" do. 796	1,287 25
	13	" do.	(3)	159		100,000	" 21	" do. 18	18,214 20
	19	" do.		173		40,000	" 23	" do. 22	4,000
	25	" do.	(2)	189		10,000	March 3	" do. 46	400 31
						43,000	April 12	" do. 156	95,000
							" 13	" do. 158	75,000
							" 21	" do. 178	200,000

I hereby certify that the above is a true and exact copy of the account of Col. E. E. Paulding, paymaster U. S. Army, with the Merchants' National Bank of Washington, D. C., taken from the books of the bank, now in my possession as receiver of said bank.

JAMES C. KENNEDY,
Receiver.

221 EXHIBIT No. 1.

WASHINGTON, D. C. *March 12th*, 1872.

I, James C. Kennedy, of the city of Washington, in the District of Columbia, do hereby certify that having been, on the 8th day of May 1866, appointed receiver of the Merchants' National Bank of Washington, D. C., I duly qualified as such receiver and entered upon the duties of the office, and am yet engaged in the performance of such duties. I do further certify that upon my appointment as such receiver I took possession of all the books and assets of the said bank, and proceeded to collect the said assets. I do further certify that among the said assets I found no stock whatever of the Washington, Alexandria and Georgetown Railroad Company; and that from the bills receivable and other assets of said bank, I have been unable to realize more than fifteen thousand dollars, ($15,000,) while the liabilities of said bank amount to about $1,000,000, to wit, about $700,000 due to the Government of the United States & its disbursing officers, and about $300,000 to individuals.

JAMES C. KENNEDY,
Receiver.

[Circular.]

PAYMASTER-GENERAL'S OFFICE,
Washington May, 30, 1855.

To *Chief Paymaster.*

222 SIR: Whenever drafts are remitted by the Treasury to yourself direct, or for your disbursing credit with any authorized depository, (subtreasury or national bank,) you will keep the same on deposit in that place till exhausted by your checks in the process of your official requirements. In other words, the practice of transferring large sums from the place where the Treasurer places them to your credit to other places or depositories in the same city or immediate neighborhood is *pre*emptorily forbidden. Nor will such transfers be made from one city to another, except as public necessity shall demand. It is desirable and proper that the depositories which furnish the funds shall have the benefit of the deposits during the process of disbursement.

(Signed) B. W. BRICE,
Paymaster-General U. S. A.

I hereby certify that the above is a true copy of a circular issued from this office, (office of Paymaster-Genl.)
Washington, March 14th, 1872.

BENJ. ALVORD,
Acting Paymaster-General U. S. A.

Be it known that Benjamin Alvord, who has signed the certificate attached to the annexed circular, is the Acting Paymaster-General of the Army of the United States, and that to his attestation as such full faith and credit are and ought to be given.

In testimony whereof I, William W. Belknap, Secretary of War,
223 have hereunto set my hand and caused the seal of the Department of War of the United States of America to be hereunto affixed this 14th day of March, 1872.

[SEAL WAR DEPT.] WM. W. BELKNAP,
Secretary of War.

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
Washington, D. C., April 10th, 1872.

It appears from the records of this office that Brevet Lieut. Col. E. E. Paulding, additional paymaster U. S. A., was tried by general court-martial, as per Special Orders No. 249, dated War Department, Adjutant-General's Office, Washington, May 26th, 1866, and the following are true copies of the testimony of L. C. Bayne and Oscar King, given by them on the said trial of Br't Lieut. Col. E. E. Paulding, ad. paymaster U. S. Army.

J. HOLT,
Judge-Advocate-General.

Be it known that J. Holt, who has signed the foregoing certificate, is the Judge-Advocate-General of the Army of the United States, and that to his attestation as such full faith and credit are and ought to be given.

In testimony whereof I, William W. Belknap, Secretary of War, have hereunto set my hand and caused the seal of the Department of War
224 of the United States of America to be affixed on this tenth day of April, on thousand eight hundred and seventy-two.

[SEAL WAR DEPT.] WM. W. BELKNAP,
Secretary of War.

WASHINGTON, D. C., *Saturday, June 9th,* 1866—1 *p. m.*

The court met pursuant to adjournment; present, the same members of court as at the last session, the judge-advocate, the accused, and his counsel.

The proceedings of the last session were read and approved.

L. P. BAYNE, a witness for the defense, having been duly sworn, testified as follows:

By the counsel for the defense:

Q. State your full name.

A. Lawrence P. Bayne.

Q. Where do you reside?

A. In the city of Baltimore.

Q. Were you present at an interview, April 20th, at the house of Mr. Huntington, cash'r 1st Nat. Bk. in this city?

A. I was.

Q. How came you to be present, and what transpired?

A. I was telegraphed for by the pres't of the Merchants' Nat. Bk. to meet Mr. Huntington and some other gentlemen with reference to our financial condition. I went to the Merchants' Nat. Bank, and was there told by
225 Mr. Boteler, Mr. Sherman, and Mr. King that I must go to the house of Mr. Huntington, cash'r 1st Nat. Bk., Washington. I went there. It must have been half past 9 or 10 o'clock at night. Mr. Huntington, Mr. Boteler, vice-president Merchants' Nat. Bank, Mr. King, one of the directors of that bank, Mr. Sherman, the cash'r, and myself were present. Mr. Huntington stated that the Merchants' Nat. Bk. had made application to him

that day for a loan of some money, and that it was for the purpose of aiding Bayne & Co. in getting out of their difficulties, which difficulties we had fully explained to the bank some time before. He said that before further aid could be given to that bank, he had been requested by gentlemen in high official position—and he said "When I say high official position, I mean the highest official position"—to go down and examine into the affairs of the bank, and if he found the bank to be all right he was authorized to give such aid as was necessary. He said he had examined the affairs of the bank that day and found all right, except that they had too much money at one point. I said "I suppose you refer to Bayne & Co." He said he did. I remarked that I recognized the fact and was sorry to know that it was so. He then wished to know how much money it would take to give me the relief I wanted. I told him I believed that with the assistance of $150,000 it would enable me to take up all the floating debts I had that gave me trouble,
and that if I could retire this floating debt I should be able to
226 work through. That was my belief at the time. After a good deal of conversation with reference to these things, Mr. Huntington said he would recommend that the relief be given to the bank. I think he used the words "deposit" or "transfer" to be made to the bank. That in that event I would get $150,000. That is about the sum and substance of the conversation that took place there.

Q. Was he unequivocal and decided with regard to his declaration in favor of recommending the relief?

A. Very much so; so much so that I felt that really both my own future financial condition and that of the bk. were pretty much in the hands of Mr. Huntington. He could do pretty much as he pleased in the premises, & he was very emphatic, and it seemed that whatever he said would be done. He seemed to have all authority in his own hands, so far as I was concerned. That was my impression at the time. There was no gentleman's name mentioned.

Q. Nothing was said as to how this money was to be obtained?

A. Nothing further than that.

Q. In answer to a question put by the court to Mr. Boteler he stated that after this interview, and you had left Mr. Huntington's, you expressed some doubt about his doing it. Did that doubt grow out of anything Mr. Huntington said or from something you had cause to suspect in the man? I ask this as protection to you.

A. It was only just this: When we had left and were walking
227 down the street I said to Mr. King or Mr. Boteler, I forget which, "Mr. Huntington is very emphatic. Do you think he will do as he has promised to do?" They said they did not think there could be any doubt about it. Why did I ask? I replied that the language gentlemen were accustomed to use in Washington was something like the language of diplomacy. They generally eased men off in a gentlemanly style; and I had heard of Mr. Huntington, though I had never met him personally before, except casually at a depot, but I had heard of him as a gentleman who made promises sometimes when perhaps he did not intend to do just what was said or understood, as is done by men seeking office; something of that kind. But he was very emphatic in his language that it would be done.

Q. Was it afterwards done as agreed by him?

A. Yes, sir.

Q. Did you state to him at that interview that night how you wanted the funds placed to your credit?

A. I did. I stated to him that it was absolutely necessary for me to

have not less than $100,000 in New York the next day, and I wanted $50,000 of it sent to Scott, Capron & Co., and $50,000 to Hoyt, Anthony Douglas & Co. Mr. Huntington said he would do it, and I believe about 3 o'clock the next day it was done—partly through the house of Jay Cooke & Co. Mr. Huntington had it placed there by telegraph. The other $50,000 was sent to me that evening through the hands of Mr. King, the director.

It was Mr. Huntington's draft on, I think, the Croton Bank, but
228 of that I am not positive. It was the draft of the 1st Nat. Bank for $50,000, making $150,000. That was the only time I ever applied to that bk. for a loan.

Q. Explain how you happened to be so largely indebted to that bk. (Merchant's) at that time.

A. The bank kept a regular account with Bayne & Co. I can show the course of my account, running on for years. Sometimes the bank was indebted to me largely; sometimes we were heavily indebted to the bk. This last amount, I am satisfied, was brought about by the agency of the 7-30 bonds. The Merchants' Bk. was a heavy subscriber to the 7-30 bonds, and they were sent to us to be disposed of. They lay in our hands for a long time, when they ordered them closed up. They ordered them closed at a time when it put us rather in a loss than otherwise. I have the papers here to show the whole of our transactions with them, and will exhibit them if desired, showing that the account was kept just as any other bank account, checks and drafts running on for years. Sometimes they were heavily overdrawn; sometimes the account was as much as $250,000 in our favor, and then again it would be to their credit, showing, however, in the course of a year perhaps only $5,000 difference in interest account.

Q. Did you return to Baltimore that night?

A. No, sir; the next morning I went home on the six o'clock train.

Q. Did you see Col. Paulding that night or next morning?

229 A. No, sir; I never met the col. but twice in my life before the suspension of the bank.

Q. Did you return to this city again on the 21st?

A. No, sir.

Q. Was your house, Bayne & Co., hopelessly insolvent on the 20th or 21st of April?

A. It is very difficult for me to answer that now.

Q. How did you regard yourself then?

A. We are now adjusting our accounts as fast as we can to see how we did stand. It is a very large business. I felt until then that with $150,000 or $200,000 I would be able to get through without further difficulty, and recover. I had made my condition known to some of the banks I owed in Baltimore, as well as the bank here, who were our creditors. There was no secret about it, so far as those to whom we were largely indebted were concerned. We had met with some very heavy losses and lock-ups thrown upon us.

Q. Was there a consultation after that between your banking-house, Mr. Huntington on the part of the 1st Nat'l, Mr. Coyle of the Nat. Bk. of the Republic, and other bank-officers, in relation to the Merchants' Nat. Bank of this city?

A. Yes, sir. Several gentlemen came over to Baltimore by appointment, to my office. It was, I think, on the night previous to the failure of the Merchants' Bank.

Q. What was the purpose of that consultation?

(The judge-advocate objected to the question as irrelevant.)

230 The Accused. There is an allegation that the accused took no steps to secure his deposits. No evidence has been adduced in support of that allegation, but the judge-adv. has not stated that he should not insist upon it, and I now propose to show that these officers went to Baltimore to consult as to the best means of saving the Merchants' National Bank, and particularly this money which had been deposited, as has been shown; that this consultation was held at the solicitation of the accused after he became aware of the imperilled condition of his funds, & I want to show the result.

(The judge-adv. withdrew his objection.)

A. I understood the purpose to be to ascertain whether or not the affairs of Bayne & Co. were in such a condition as would enable them to go on, and for these gentlemen to give further assistance to the Merchants' Nat. Bank. That exhibit we did make to them, and we understood from some gentlemen present that it was satisfactory. I can only state my impression. They made no communication to me particularly; but my impression was they would give the necessary assistance to the bank. I got that impression from the general manner and tone of all present.

Q. Was it a consultation of national banks?

A. I can give you the names of the gentlemen present: Mr. Huntington, cash'r 1st Nat'l Bank was there; Mr. Coyle, pres't Nat. Bk. of the Republic, Wash'n; Mr. Hutchinson, cash'r Nat. Bank of the Metropolis, of Washington; Mr. Stephens, cash'r of the Nat. Ocean Bk., New York; Mr. Huyck, pres't, and Mr. Boteler, vice-pres't, of the Merchants'
231 Nat. Bank, Washington, and Mr. Fant, of the 1st Nat. Bank, Richmond. I believe those were the officers present. After I had made my exhibit to them, not knowing exactly what their determination was, only judging from what was in my own mind, I said to them, "Gentlemen, under any circumstances, let me beg of you to sustain the bank in Washington. I do not wish to make any assignment. I am willing to go into liquidation, if you deem it best I should do so; and I invite you to send a gentleman of business ability and character into my office to take his stand there and see that I wind up this business faithfully and honestly, and after paying some few depositors, to appropriate everything I have to the payment of this debt to the bank in Washington." With that we separated. I knew nothing more until next day. I was forced into an assignment by the directors of the Merchants' Nat. Bank. They did not give me two hours to consider the matter.

Q. Was this bank preferred?

A. By their own consent & the consent of their counsel, I was allowed to prefer $75,000 in favor of some little depositors, scattered deposits, the nature of which I stated. They consented, and asked me to make them the second preference for $150,000 for the money which I had borrowed of this bank, which I did, and I appointed just the trustees they named, deducting nothing at all. I urged them not to force me to make an assignment. I thought it would be disastrous to all interests if they
232 did. Mr. Boteler and Mr. King were present, representing the bank, and also the attorneys of the bank, Mr. Alexander and Mr. Stockett Mathews, and urged the assignment. The assignment was made on the condition that they would give me an absolute release, but they have never done so; I to make an assignment of everything I had, which I did. I did not withhold a chair from them. I have not a bed in my house now that is not assigned. I left the office with $4.70 in my pocket.

Q. Had you, previous to this failure, met with financial disasters

and, if so, what did you do in relation to securing your creditors on that occasion?

(The judge-advocate objected to the question as irrelevant.

The accused desired to show, in answer to an impression which had got abroad, and might have come to the ears of the court, that though this witness had met with a similar disaster previously, yet after the lapse of several years he had, by a compromise, & by the aid of his friends, begun business again on a small capital, prosecuted it faithfully & successfully, and paid off all his creditors.

The judge-advocate insisted on his objection, & the accused withdrew the question, to stand of record.)

Cross-ex'd by the judge-advocate:

Q. From your written statement and verbal answers to Mr. Huntington on the night of the 20th of April——

A. (Interposed.) I submitted no written statement. I stated emphatically that I could not make a written statement, for I received a telegram about 6 o'clock, after my office was closed, & I telegraphed
233 back that I could only make a verbal statement.

Q. From that verbal statement, did it not appear that it was absolutely necessary for you to have that amount to enable you to meet your floating debt in Baltimore?

A. Yes, sir; I stated so.

Q. Was it not also stated that if you received that assistance, you would release certain securities and remit them to this bank?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir; I released 850 shares of railroad stock, which I returned to the president of the bank, and I released 100 shares of the stock of the Merchants' Bank, just the character of securities I said I would release.

Q. What did all of them amount to?

A. Estimated then at a value of $80,000 or $90,000. I emphatically stated that the use of this $150,000 would be to retire the floating debt, which was based partly upon collaterals and the balance upon no collaterals.

Q. Then, so much as were hypothecated for your floating debt you realized?

A. Yes, sir; a portion of them. I was carrying about $180,000 which I termed floating debt and which it was absolutely necessary, for my ease and comfort, to get out of the way. Of that, a portion was based on securities of the kind I mentioned. Mr. Huntington, when I named the securities, said he preferred that I should retire some other
234 security than railroad. I said a portion of the debt was based on that security and it was necessary to take that up, which I did, and handed it over to the pres't of the bank. One hundred shares of the bank's stock I sent to the bank, & I hold the bank's receipt for it.

Q. Was that the stock you had transferred, belonging to Oscar King?

A. No, sir. It was my own stock. I do not know whose name it stood in, but I owned the stock individually, myself. It was used by Bayne & Co. I handed it over to the bank. It made no difference to them, so they got it.

Q. Was that the stock Oscar King assigned to you?

A. No, sir; my stock was $10,000, par value—100 shares. It cost me $10,000, which I paid in money for it. I estimated it to the bank, however, at $8,000, because it took $8,000 to take it up.

Q. You say as you were coming away from Mr. Huntington's house

on the 20th you asked the other gentlemen whether Mr. Huntington would do as he promised?

A. I did.

Q. And they expressed the opinion that he would, & that he was honest in the expression of his opinion?

A. Yes, sir.

Q. How came you to doubt?

A. Simply from the impression that had been made on me with reference to Mr. Huntington. I mean no disrespect to him—nothing
235 to shadow forth any want of confidence—but it was just an impression that Mr. Huntington was a gentleman who was easy in promising, but at the same time there might be a hitch.

Q. Was not that impression based on the manner in which bank-officers talk and act under such peculiar circumstances?

A. No, sir. I have generally found bank-officers open & frank in well-organized business communities, where we know the men.

Q. You say you know nothing against the character of Mr. Huntington?

A. Nothing at all. It was only an impression.

Q. You had nothing positive to base it on?

A. I do not know. I had received it in some way.

Q. Was it from the manner in which he had conversed that evening?

A. No, sir; he was very emphatic.

Q. Was it not from your knowledge of the appearance of the statement you had made to him?

A. No, sir; because he expressed no doubt whatever with regard to my statement.

Q. Had you yourself any doubt?

A. None at all. It was only an impression that passed over my mind with regard to gentlemen in official position at Washington. I do not mean it as any reflection, but, of course, at the seat of government there must be more or less of the language of diplomacy used, and men
236 even in unofficial position will acquire that and become patronizing in their intercourse with one another. In other words, as Paul said, "All things to all men."

Q. Then, although you say he spoke so emphatically, you really had a doubt when he uttered the words?

A. I say I had a doubt, not at the house, but after we left, whether Mr. Huntington would really be sufficiently interested in the matter under consideration to do as he had promised; but, in saying so, I beg to be understood as casting no reflection upon him.

Q. That is the reason you formed the impression; not from any want of confidence in the man's integrity?

A. None; only that general impression, as I have stated, that he was one of those men we meet, as I have tried to describe. I do not wish to cast any reflection upon Mr. Huntington.

Q. This $150,000 was transferred to you the next day?

A. Yes, sir; to the bank. I received it.

Q. Has not the event proved, in connection with that affair, that $150,000 was not sufficient to relieve you?

A. Yes, sir; that is very plain.

Q. Are you not also aware of the fact that the solvency of the Merchants' Bank depended on your solvency?

A. No, sir; I am not aware of that fact. From representations made to me, it would appear that it did not depend on my solvency, if
237 I could have paid all that I owed them. I suppose I owed the

bank about $400,000. They have me down for about $750,000 or $760,000, but it was about $400,000. There is a large deficiency as represented. I know nothing of that deficiency of my own knowledge.

Q. Was it understood that, to keep you afloat, the Merchants' Bank was also to meet certain demands which you were to make on them?

A. It was understood by the pres't of the bank at the time I got this $150,000 that they were to pay certain acceptances which the bank had drawn upon me; that they were to pay them themselves. I had previously stated emphatically to Mr. Huyck, pres't of the bank, who was not present at the interview at Mr. Huntington's, that unless these acceptances were paid, I would under no circumstances take the $150,000, because it would not have given me relief. Mr. Huyck assured me that these acceptances would be paid, or would be protected.

Q. Were they paid?

A. They were not. I paid $25,000 of them myself for the bank, and I think $8,000 of personal drafts.

Q. The acceptances that the bank agreed to pay by that arrangement were not paid by them?

A. They were not.

Q. When was that last interview in Baltimore?

A. I can't give the date. It was the night before the bank suspended.

238 Q. You have said that after consultation with, and at the request of, the attorneys of the Merchants' Nat'l, you made the assignment?

A. The attorneys and directors, or the vice-pres't.

Q. You say you preferred them?

A. Yes, sir; $150,000 second preference.

Q. What was the effect of the preference, so far as the bank was benefitted?

A. That has not transpired.

Q. Then it has received no benefit from that preference.

A. No, sir; we are only adjusting the accounts. There are $75,000 before we get to that $150,000.

Q. From your knowledge at the time, and from the facts which have since come to your knowledge, state whether the house of Bayne & Co. was not in an insolvent condition on the 20th of April last.

(The accused objected. The conduct of the parties on the 20th of April must be judged in view of their knowledge on the 20th, aside from facts which have since come to light, and were to them unknown.

The court was cleared for deliberation, and after some time so spent, was re-opened, and the judge-advocate announced that the court sustained the objection.)

By the accused:

Q. How long have you been a banking-man?

A. Since 1849, I believe.

239 Q. Suppose you had on deposit to your official or personal credit $270,000 or more in a bank which you are informed is in an embarrassed financial condition, and in danger of insolvency; would you, as a prudent business man, make an additional deposit of $200,000 with that bk., if, upon the opinion and recommendation of an expert whom you could trust, and who had examined into the affairs of the bank with the view of determining its financial condition, you were satisfied that by so doing, based upon said opinion and recommendation, you would save the money to your credit in such bank, and would you regard that as a proper measure to secure such funds?

(The judge-advocate objects to the question as assuming an hypothesis not in evidence.

The accused, in reply to the judge-advocate, referred the court to the record, page 147, as making this case res adjudicata, this court having already decided that an hypothetical case, similar in fact if not in terms, was proper, and the reply was received. In that case the judge-adv. called a paymaster to prove what, in a given state of facts, was the duty of the accused. In this case the defense calls an expert, a banker, to prove what would have been a proper and prudent measure under the state of facts given in the question. This is permitted in all courts of justice, & is thought to be proper in this instance. The defense proposes to show by the leading banking-men, experts, of this city and elsewhere, by replies to this question and questions of a similar
240 character, that the action of the accused was that which would have been adopted by any prudent business man under the circumstances. The defence propose to show this by at least 50 witnesses, if necessary, as the very essence of their case, and as practically that which is already in the evidence on the part of the prosecution. If the court will allow it, the counsel for the defense will submit legal authorities without number in support of his proposition.

The court was cleared for deliberation, and after some time so spent, was re-opened, and the judge-advocate announced that the court sustained the objection.)

On motion, the court adjourned until Monday, at 11 a. m.

(Signed) C. C. AUGUR,
Maj. Gen'l, Pres't G. C. M.

(Signed) WM. K. HAVILAND,
Capt. V. R. C. & Judge-Advocate.

OSCAR KING, a witness for the Government, having been duly sworn, testified as follows:

By the judge-advocate:

Q. State your full name, age, residence, and occupation.

A. Oscar King; 41 years; Baltimore. I do not know as I have any occupation just now. I am in no particular settled business.

241 Q. Were you not a directer of the Merchants' National Bank of Washington in April last?

A. I was.

Q. How long were you a director of that bank?

A. Since September or October previous.

Q. Do you recollect soliciting a transfer of funds to your bank by Col. Paulding in the month of April last?

A. I asked the col. for a transfer once, I think at that time. I think it was in April. It was along the 19th or 20th.

Q. What amount did you request him to transfer?

A. $150,000 or $200,000.

Q. What reply did Col. Paulding make to you when requesting him to make the transfer?

A. He said he could not make the transfer.

Q. Did you state to Col. Paulding why you wished him to transfer to your bank $150,000 or $200,000?

A. I stated to him in the conversation that occurred between the president and——

Q. (Interposing.) Did you state to Col. Paulding why you wished him to transfer to your bank $150,000 or $200,000?

A. I did.

Q. What did you state to him? State exactly what you said to Col. Paulding.

A. I said to Col. Paulding that I had just been informed by the president of the bank that the bank at that time was in a position
242 that they needed funds for a day or two. I asked him if he could transfer or deposit with us the amount I have stated. He stated he could not.

Q. Is that all you said to him?

A. That is all I said to him at that time.

Q. When was it that you said that?

A. That was on the morning of Friday. I don't remember the date. The Friday before the transfer was made.

Q. You say that was all you said to him at that time?

A. This is, in substance, all I said to him.

Q. Do you recollect at that time of saying anything further to him than what you have related?

A. No, sir; nothing further.

Q. You have given here your language as you recollect it?

A. It may not be in those words, but to that effect.

Q. If you know the words you did use in the statement to Col. Paulding, state them.

A. I have stated them as near as I can.

Q. You say that is all you said to him at that time?

A. Yes, sir.

Q. When next did you talk with him on the subject of the transfer of $200,000 to your bank?

A. I think I saw the colonel on the Saturday after the transfer was made; that was the next day.

Q. What did you say to the colonel relative to the transfer on Saturday?

A. I saw the colonel in his office about 12 o'clock, I think; the time the checks were made out.

243 Q. Where were the checks then?

A. At his office.

Q. State what he said.

A. There was nothing said.

Q. State what you said to him.

A. I didn't say anything to him. I went in there to see. This was a matter to be done that day. I can explain it all.

Q. I am asking for conversations.

A. Well, sir, we had no conversation at all.

Q. You said nothing to him?

A. I went into his office with Mr. Sherman. I think that was the first time I saw him since the interview with Col. Paulding on the morning before. Then Mr. Sherman and I went into the office and he had the checks prepared. His clerk had them to go and deposit.

Q. Did you say anything to Col. Paulding there in his office, at that time, relative to the transfer?

A. I don't think I did.

Q. Did he say anything to you relative to the transfer at that time?

A. He only said he had drawn the checks, and the boy had them, and had gone down to the bank to deposit them.

Q. Do you recollect on the 19th day of April, in the first interview you state you had with Colonel Paulding, of saying anything to

him about the condition or wants of your bank at that time, the 19th?

A. I do not remember the date of the transfer. It was the day before the transfer.

Q. In your interview with Col. Paulding on the Friday previous to the transfer did you say anything to him with regard to the wants or condition of your bank?

A. I answered that. That was the first question you asked me. I told you I did.

Q. Did you say anything with regard to the condition of your bank?

A. I told him we needed money that day.

Q. Did you say to him why you needed money?

A. I told him the bank was in want that day of money. I told him the bank was in need, and had to have money that day.

Q. I ask the cause of the need; did you tell him that?

A. No, sir; I did not. I might have stated to him, as any other person, that the bank was in need of funds that day to carry it through for a day or two. I stated that to him.

Q. And nothing further than that?

A. Nothing further on that subject relative to the transfer.

Q. Then all the reason you assigned to Col. Paulding for wishing the transfer to your bank was, that the bank was in want of funds that day?

A. Yes, sir, for a day or two, because he might want to check them out; if he could deposit there for a few days, subject to his checks.

You are positive you have stated all the conversations you ever had with Col. Paulding relative to the transfer of $200,000, or the application for such a transfer?

A. I have stated the meaning of the words.

Q. If you can state anything further now that you remember to have said to Col. Paulding with reference to that transfer, state it to this court.

A. I do not think of anything else. I don't think I was in his presence at that time five minutes. I am positive I was not in his room five minutes. We then returned to the bank. I am positive the interview was not five minutes.

Q. Being a director of the bank at that time, did you know what amount was then deposited to the credit of Col. Paulding in your bank?

A. I do not know the exact figures.

Q. About the amount?

A. I think it was represented to me as being 2 or 3 hundred thousand dollars.

Q. Had you seen the books to know that?

A. No, sir, not until after; then I didn't see his account. I have never seen his account.

Q. Being a director of the bank at that time, suppose Col. Paulding's check had been presented for $300,000 on Saturday, the 21st day of April, could the bank have paid it?

A. I do not know that they could. I do not suppose it is possible for any director of any bank to answer such a question. I can't tell you. I should suppose they could. I do not know.

EVIDENCE FOR THE DEFENCE.

OSCAR KING was recalled as a witness for the defence, and testified further, as follows:

By the counsel for the defence:

Q. Were you present at an interview between Mr. Huntington and

any of the officers of the Merchants' Bank on the evening of the 20th of April last?

A. Yes, sir.

Q. Where was that?

A. The first interview was at the Merchants' National Bank office.

Q. Who were present?

A. Mr. Huntington, Mr. Boteler, Mr. Leonard Huyck, Mr. Sherman, and myself.

Q. State what took place at that interview.

A. Mr. Huntington said he came down to look at the statement of their affairs. He asked if they had drawn one off. Mr. Sherman said they had, and produced a statement of the affairs of the bank up to the night before, I think, with the exceptions of the transactions of that day's business. Mr. Huntington examined it very carefully and
247 said, "I do not see but what everything is all right here. The most of your funds are in one man's hands. It is all in a nut-shell. If this man is good, I do not see any trouble with you."

Q. What firm did he refer to?

A. Bayne & Co. After the matter had been talked over, he said it would be necessary to get a statement from Bayne & Co. before he could do anything in the premises. Accordingly a telegram was sent to Baltimore for Mr. Bayne to come over with a statement. Mr. Bayne came over, and we made an appointment to meet Mr. Huntington at his house.

Q. Was the appointment made at the bank?

A. Yes, sir; that Mr. Huntington with Mr. Bayne should meet us at his house at 9 o'clock that night. The train did not start until half past seven, and arrive, here at about 9. Mr. Bayne came; then occurred the second interview.

Q. Who were present at that interview, and what occurred?

A. Mr. Boteler, Mr. Bayne, Mr. Sherman, and myself. We went to Mr. Huntington's house. At that interview Mr. Huntington questioned Mr. Bayne as to his business generally, and as to the probability of his making good to the bank his account, and what he wished to do with the money he might get; and his statement was made very generally. The matter was talked over. We spent an hour and a half or two hours together. Mr. Huntington, after general conversation, said he
248 saw no reason why he could not get through if he had the assistance of $150,000 or $200,000. It was arranged that he, Huntington, would see to his getting $150,000 the next day. Mr. Huntington said he would recommend the transfer of funds from his bank.

Q. Give Mr. Huntington's language.

A. Mr. Huntington then stated that he had consulted with parties high in authority, and that this matter of transfer of funds had been left to him entirely; and after the examination he had made of the bank and of Mr. Bayne, he saw no reason why it should not be made, and he should recommend it. He said he would recommend it, and then said where Mr. Bayne should receive it, when Mr. Bayne should have the $150,000 to take up his floating debt in the street in Baltimore. He arranged how it should be paid. Mr. Bayne said it was important, and it must be in New York the next day. He asked Mr. Huntington if he could put $150,000 in New York by telegraph next day. Mr. Huntington said he could; but perhaps he might have to sell some bonds or something of the kind, and there might be a little loss, and he turned to Mr. Sherman & said, "If there is any loss I shall charge it to you." He answered, "Of course, if there is any loss in your transaction we will pay it." Then it was agreed that the transfer should be made, $50,000

to one house and $50,000 to another. After that we got the names of the parties it was to go to, and carried them up to Mr. Huntington's office in the morning.

249 Q. Have you stated all that occurred that night?

A. It was general talk; a business conversation for an hour and a half. Mr. Huntington was quite particular, and asked Mr. Bayne what securities he was to relieve. The securities were mentioned; some securities he, Mr. H., recommended should be taken up and some he thought probably had better remain, as they had got an advance of all they were worth. This arrangement was all completed there in his room that night.

Q. Was Mr. Huntington clear and emphatic in his statement that he would recommend the transfer?

A. Yes, very positive.

Q. This was a transfer to the Merchants' Nat. B'k by Col. Paulding of funds in the First Nat'l B'k to his credit?

A. Yes, sir.

Q. State Mr. Huntington's language as to his acting for high officials.

A. He stated that the matter had been left with him. He had consulted with those in authority, and it had been left to him to make the examination & to recommend it if he thought proper, and after an examination of both the b'k and Mr. Bayne, he said he should recommend it. That is about the gist of what happened that night.

Q. What happened next morning?

A. Next morning Mr. Sherman & myself started for Mr. Hunt-
250 ington's office to see that the arrangement was carried out as promised, as it seemed to be quite important at that time that the money should be in New York by such a time, & we were a little anxious to get it all done. We had the memorandum of where the money was to go. We met Mr. Huntington at the corner of F and 14th streets talking with a gentleman. This was between 9 & 10 o'clock, before we had been to the bank.

Q. Before the transfer and before you had seen Col. Paulding?

A. I did not see Col. Paulding at all that morning. To proceed: After shaking hands Mr. Huntington said, "Go on up to the office & I will join you soon." We went up there and waited 20 or 30 minutes, when Mr. Huntington came into the office. We were sitting in the little vestibule to the main office. He asked us then into the private office; we took our seats there. He came in & brushed himself and washed himself & then went into the main office. While we were there Col. Paulding came in & went into the main office of the bank. I saw him pass. Some little time elapsed & Mr. Huntington came out of his office into the private office and said, "It's all right;" that they would make the transfer. He spoke about making it for $150,000. That was the amount Mr. Bayne had agreed upon the night before. Mr. Sherman stepped up and said, "We want $50,000 for our own use; make it $50,000 more." Mr. Huntington spoke to Col. Paulding as he was
251 coming out of the door and said, "Make the checks for $200,000." That was the end of the conversation, & he came in then & had some little conversation with Mr. Sherman.

Q. State that.

A. He took Mr. Sherman to one side and said, "This is all arranged by authority of those high in authority, but it must be kept perfectly"—and then he placed his fingers to his lips thus, (witness illustrates.) He had his arm around Mr. Sherman's neck and his elbow on the window looking across to the Treasury. That is as near as I can explain

it. That was the conclusion there, after we had some little conversation not pertaining to this business generally. We then bid him good morning & left the office.

Q. In this whole transaction, so far as Col. Paulding's relations with it were concerned, do you know or have you any suspicion of Col. Paulding having the remotest interest, direct or indirect, pecuniarily in this matter for the part he took in it?

A. Not to my knowledge, sir.

Cross-ex'd by the judge-adv.

Q. At the interview at Mr. Huntington's house was it not shown by Mr. Bayne's verbal & written statement that it was absolutely necessary that he should receive this amount to enable him to meet his liabilities?

252 A. Mr. Bayne wanted so much.

Q. To meet his liabilities; was it not so shown?

A. Certainly it was.

Q. Was it not shown that without it he could not go on?

A. That I do not know. He had to have $100,000 in New York that day to protect himself, as he had drawn that day.

Q. Was it not also shown that if Bayne & Co. should be unable to get that, the Merchants' Nat'l B'k was insolvent, & would be in consequence of that very fact?

A. No, sir; I do not know as it was shown that way. From the examination by Mr. Huntington of the bank and of Mr. Bayne he was satisfied, as Bayne was a large creditor, if he could get assistance.

Q. Have you not stated that Mr. Huntington said the solvency of the bank depended on the solvency of Bayne & Co.?

A. Yes, sir.

Q. Then if Bayne & Co. could not meet their liabilities your bank was insolvent?

A. The bank had a large amount of money in Bayne's hands. I think the bank could have gone on if Bayne had failed that day.

Q. Then the statement of Mr. Huntington that the solvency of the b'k depended on the solvency of Bayne was not true?

253 A. That was the inference I drew from Mr. Huntington's examination.

Q. Did you not say in direct examination that he used that language?

A. He said "You have too many funds in one man's hands. If this man can go on, you can. It's all in a nutshell."

Q. Is that the language you used in direct examination?

Q. Yes, sir.

Q. If Bayne & Co. could not meet their liabilities, was it not a necessary fact that that bank was insolvent?

A. If Mr. Bayne could not get on, of course the bank was insolvent, because he had the whole capital of the bank in his hands.

Q. You say Col. Paulding had no pecuniary interest, to your knowledge, in the transfer of that money?

A. None at all.

Q. Had you any pecuniary interest in the transfer?

A. I was anxious for the bank to be safe.

Q. Had you any other pecuniary interest than that?

A. No, sir; I had my own means in that. I was anxious to save the bank. It was a consultation between two banks.

Q. Those two were the only reasons of interest you had?

A. Yes, sir.
Q. Did you not receive a pecuniary interest for the deposits made by Col. Paulding in the Merchants' Bank?
254 A. I received interest on the deposits made there by Col. Paulding.
Q. You received three per cent. on the deposits of Col. Paulding?
A. Yes, sir.
Q. By whom was that paid?
A. By Mr. Huyck, president of the bank.
Q. Was anything said between you and Col. Paulding about that?
A. No, sir.
Q. Did you not studiously avoid speaking to him of that?
A. I don't know as I did. I did not know as it was of any interest to him to know it.
(The accused objected.)
The judge adv. stated that he wished to show the degree of credibility of the witness.
(The accused withdrew his objection.)
Q. Then you did receive three per cent. interest on the amount of his deposits?
A. Yes, sir.
Q. You received that three per cent. in consideration of your securing the deposits to that bank?
A. I had it for my services benefitting the b'k.
Q. For securing those deposits to the bank?
A. Securing any deposits.
Q. Securing any of Col. Paulding's deposits?
A. All deposits I secured.
255 Q. You have spoken of having received 3 per cent. on his deposits; did you not receive that 3 per cent. in consideration of securing that deposit to the bank?
A. I received 3 per cent. on 3 months of interest.
Q. Did you not receive 3 per cent. interest on the amount of Col. Paulding's deposits there in consideration of your services in securing those deposits?
A. I did. I have stated so. I have stated I got three per cent.
By the accused: Did you communicate that to Col. Paulding on the 20th or 21st; or do you know of your own personal knowledge that he ever had any information on that subject?
A. I did not see Col. Paulding at all until after the transfer was made.
By the judge adv.:
Q. What means had you in the bank at that time?
A. I heard that day, or the day after, that my stock was transferred. I had $5,000 of stock in the bank.
Q. Was that its real or par value?
A. It cost me $5,000.
Q. What amount had you on deposit there?
A. I had no deposits there, nothing but the $5,000 in stock; that was all the stock.
Q. Was it transferred?
A. The stock had been transferred.
Q. When, prior or subsequently, was it transferred?
256 A. Prior to this, but without my knowledge or consent.
Q. In fact, then, you had no pecuniary interest in the bank this transaction occurred?

A. It so seems by the books; but I would like to explain that.

Q. Proceed.

A. My stock was in the hands of Bayne & Co., with other securities there, and they were transferred to some brokers in Baltimore, I think, and those persons, it seems, got more frightened at Bayne & Co. than the bank, and without my knowledge they sent them here and had them transferred, which left me without any stock.

Q. This stock of yours was transferred as security against Bayne & Co.?

A. Yes, sir.

By the accused:

Q. Does this interest you received, of which you spoke, include interest on deposits made by the Treasury Department?

A. No, sir; my stock was put in Bayne's hands, endorsed for security. I endorsed my name on the back.

By the judge adv.:

Q. Then you put them in the hands of Bayne & Co. in that condition, and they, by filling them up in the blanks, could transfer them at any time?

A. Yes, sir. It will hold, sir. I hope it will hold.

257 The following organization certificate was filed in court here, to wit:

Organization certificate.

[5-cent stamp, canceled, Sept. 5th, 1864. C. W. B., jr.]

We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of organizing a banking association, and transacting the business of banking under the act of Congress entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864, do make and execute the following organization certificate:

Compared. E. M. B. McC.

First. The name of this association shall be The Merchants' National Bank of Washington.

Second. The said association shall be located in the city of Washington, county of Washington, and District of Columbia, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be two hundred thousand dollars, ($200,000,) and the same shall be divided into two thousand shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

258 Name.	Residence.	No. of shares.
C. W. Boteler	Washington, D. C.	100
Jos. B. Stewart	" "	600
Ed. Hall	" "	50
L. J. Middleton	" "	50
Thos. H. Osbourn	Prince George's Co , Md.	500
J. R. Elvans	Washington, D. C.	50
R. W. Latham	" "	100
J. W. Maury	" "	420
Thos. J. Fisher	" "	10
J. H. D. Richards	" "	20
W. W. Rapley	" "	100

Fifth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid act.

In witness whereof we have hereunto set our hands this fifth day of September, 1864.

JOHN R. ELVANS.
CHAS. W. BOTELER, JR.
L. J. MIDDLETON.
THOS. J. FISHER.
R. W. LATHAM.
J. W. MAURY.
THOS. H. OSBOURN.
W. W. RAPLEY.
JOHN H. D. RICHARDS.
JOS. B. STEWART.
ED. HALL.

DISTRICT OF COLUMBIA,
County of Washington, ss:

259 On this the eighth day of September, A. D. 1864, before me, a notary public of the county of Washington, D. C., personally came J. W. Maury, T. H. Osbourn, W. W. Rapley, J. H. D. Richards, J. B. Stewart, Ed. Hall, Jno. R. Elvans, C. W. Boteler, jr., L. J. Middleton, T. J. Fisher, R. W. Latham, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

[SEAL OF NOTARY.] H. B. SWEENEY,
Notary Public.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

I certify the foregoing to be a true and complete copy of the original organization certificate of "The Merchants' National Bank of Washington," with the acknowledgments thereof, now on file and of record in this office, and of the whole of such originals, and that such originals were so filed and recorded on the 9th day of September, A. D. 1864.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 11th day of October, A. D. 1871.

[SEAL CURRENCY BUREAU.] H. R. HULBURD,
Comptroller of the Currency.

260 Which being read and heard, the court passed the following decree, to wit:

In the circuit court of the United States for the district of Maryland, sitting as a court of equity, May term, 1872.

THE UNITED STATES OF AMERICA
vs.
BAYNE'S TRUSTEES & OTHERS.

This cause standing for hearing & being submitted, the counsel for the parties were heard and the proceedings read and considered.

It is thereupon, this third day of July, A. D. 1872, by the court ordered, adjudged, and decreed that the United States of America is entitled as a preferred creditor for the sum of one hundred thousand dollars, being the amount of the two sums of $50,000 each, remitted directly to New York from the First National Bank to the credit of Bayne & Co., as appears from the proofs in the case, with interest thereon from the 21st of April, A. D. 1866, to be paid out of the assets in the hands of the trustees in the bill and proceedings mentioned, so far as said assets may be sufficient, to the exclusion of all other creditors, in the deed of trust & proceedings mentioned, and that the said complainant is entitled to an account from said trustees; and it is ordered and decreed that the said trustees do account to and with the said complainant, and the other creditors who are named and described in said deed of trust, of
261 and concerning the matters in the proceedings mentioned, and of and concerning the assets in their hands realized or to be realized by them from the said trust property of every description. And it is further ordered and decreed that this cause be referred to Robert Lyon Rogers, esq., master in chancery of this court, with direction to take and state an account from the pleadings & proofs now in the cause and such other proofs as the parties may produce, on giving the usual notice; and in making & stating said account he shall recognize and allow in full, to the extent of assets as they may appear, the aforesaid claim of the United States as a preferred claim, to the exclusion of all other claims. And it is further ordered and adjudged that the said trustees be allowed their reasonable expenses and commissions, and costs of administering the said trust and the cost of the cause, to be allowed from the trust fund.

WILLIAM F. GILES.

And afterwards, to wit, on the 6th day of July, in the year last aforesaid, the following prayer of appeal was filed in court here, to wit:

In the circuit court of the United States for the district of Maryland.
In equity.

THE UNITED STATES
vs.
ALLEN B. CHAPHAN, WM. BAYNE, HORATIO R. Riddle, & others.

262 The defendants, by their solicitors, pray an appeal in the above-entitled case from the court's decree of July 3rd, 1872.
6th July, 1872.

S. T. WALLIS.
T. W. HALL, JR.,
Solrs. for Def'dts.

And afterwards, to wit, on the 22nd day of December, in the year of our Lord 1873, the master filed in court here the following amended report, and schedules E, F, and G, to wit:

In the circuit court of the United States for the district of Maryland.

THE UNITED STATES
vs.
WILLIAM BAYNE, HORATIO R. RIDDLE, AND others.

I, Robert Lyon Rogers, master in said cause, respectfully report to the court that in obedience to its order, passed on the 15th of December, A. D. 1873, in said cause, I herewith return to the court as a part of this report, certain schedules marked "E, F, and G," respectively, in which will be found the statement of the accounts of the trustees William Bayne, Allen B. Chapman, and Horatio R. Riddle with the trust-estate of Bayne & Co., as directed in said order of court; and in obe-
263 dience to the same I report to the court that there is due and owing the United States by the said trustee, William Bayne, eighteen thousand eight hundred and seventy-three dollars and thirty-five cents, ($18,873.35;) by the said trustee, Allen B. Chapman, twenty-eight thousand nine hundred and sixty-four dollars and four cents, ($24,964.04,) and by the truestee, Horatio R. Riddle, fifteen thousand five hundred and eighty-five dollars and thirty-two cents, as will more fully appear by reference to said schedules E, F, and G, respectively.

All of which is respectfully submitted.

ROB. LYON ROGERS,
Master in said Cause.

BALTIMORE, *December* 16, 1873.

264, 265, 266, 267, 268

SCHEDULE E.

DR. *The trust-estate of Bayne & Co., in account with William Bayne, trustee.* CR.

To said trustee for expenses, as per proof before the master, including $2,000 paid to Lawrence P. Bayne for services rendered said trustees		2,934 50	By amount of trust-funds in the hands of William Bayne, said trustee, as per proof before the master		19,082 69
To trustee for ½ the costs of this suit—vid. Schedule D, No. 1		95 44	By sale of Santa Clara stock, made by said William Bayne, trustee, as per proof before the master	1,192 00	
To the trustee for his commissions, at 6 per cent. on $40,857.45, the whole amount of trust-funds coming to his hands, including amount ($20,582.76) paid over by him to his co-trustee, Allen A. Chapman		2,451 44	By interest thereon from 16 June, 1873, to the 27th of September, 1873—3 mo. & 10 d'ys	19 78	1,211 78
To net balance in the hands of the trustee, as per this account		14,813 09			$20,294 47
		$20,294 47			
To the United States of America, the net balance in the hands of the trustee, as per order of this court passed 15 December, A. D. 1873	14,813 09				
To interest on $13,601.31, fr. 1 March, 1869, to 26th of September, 1873—4 y'rs, 6 mo., and 25 d'ys—as per said order of court	3,728 11				
		18,541 20			
Balance due		$18,541 20			

269, 270, 271, 272

SCHEDULE F.

DR. *The trust-estate of Bayne & Co., in account with Allen A. Chapman, trustee.* CR.

To said trustee for ½ the costs of this suit—vid. Schedule D, No. 1		95 43	By amount of trust-funds coming to the hands of Allen A. Chapman, trustee, as per proof before the master		20,582 76
To the nett balance in the hands of said trustee on the 26 Sept., A. D. 1873, as per this account		28,964 04	By interest thereon from the 15th day of November, A. D. 1866, to the 26th of September, A. D. 1873		8,476 71
		$29,059 47			$29,059 47
To the United States of America, the net balance in the hands of said trustee, Allen A. Chapman, by order of this court passed the 15th day of December, A. D. 1873		28 964 04			

DR. *The trust estate of Bayne & Co. in account with Horatio R. Riddle, trustee.* CR.

To said trustee for his expenses, as per proof before the master		372 25	By amount of trust-funds in the hands of Horatio R. Riddle, trustee, as per proof before the master		11,776 30
To the trustee for ½ the costs of this suit, as per Schedule D, No. 1		95 43	By proceeds of sale of ant'racite-coal stock made by said trustee, as per proof before the master	2,100 00	
To the trustee for commissions at six per cent. on $13,876.30, the whole amount of trust-funds coming to his hands		832 57	By interest thereon, from the 25th day of April, 1873, to the 26th of September, 1873, 5 mo. & 1 day	52 85	
To the nett balance in the hands of the trustee, as per this account		12,628 90			2,152 85
		13,929 15			13,929 15
To the United States of America the net balance in the hands of the trustee, as per order of this court, passed 15th December, A. D. 1873	12,628 90				
To interest on $10,476.05, fr. 1 of November, 1869, to the 26th day of September, A. D. 1873, 3 yr's 10 mos. & 25 days, as per said order of court	2,452 44				
		15,081 34			
Balance due		15,081 34			

276 Which being read and heard, the court passed the following order, to wit:

In the circuit court of the United States for the district of Maryland, sitting as a court of equity.

THE UNITED STATES OF AMERICA
vs.
BAYNE'S TRUSTEES & OTHERS.

This cause coming for further consideration upon the amended report of the master, made pursuant to the order of this court, passed on the 15th day of December, 1873, and being submitted for final disposition by the solicitors of the respective parties: It is by the court, this 22nd day of December, A. D. 1873, and in pursuance of the rules & principles of the decree of July 3d, 1873, ordered, adjudged, and decreed that schedules E, F, & G, accompanying the amended report of the master in this cause, be ratified and finally confirmed, and all other schedules of him heretofore reported be disallowed and rejected; as also all the exceptions of all parties, except so far as adopted and incorporated in said amended schedules. It is further ordered, adjudged, and decreed that *that* William Bayne, one of the said trustees, do pay over to the United States of America that portion of the said trust-funds remaining in his hands as ascertained by said amended schedule E, after deducting commissions & expenses as therein allowed, to wit, the balance of $18,541\frac{20}{100}$, with interest thereon from the date of this order until paid; and that Allen *G.* Chapman, another of said trustees, do pay
277 over to the United States of America that portion of said trust-funds remaining in his hands, as ascertained by said amended schedule F, after deducting the expenses and allowances to him therein made, to wit, the balance of $28,964\frac{04}{100}$, with interest thereon until paid from the date of this order. And that Horatio R. Riddle, another of said trustees, do pay over to the United States of America that portion of the said trust-funds remaining in his hands, asascertained by said amended schedule G, after deducting commissions & expenses as therein allowed, to wit, the balance of $15,081\frac{34}{100}$, with interest thereon from the date of this order until paid, together with the respective proportions of costs as taxed against them in said schedule. And it is further ordered, adjudged, and decreed that the said several trustees shall respectively bring and deposit in this court, to be paid over to the complainant as aforesaid, the said several & respective sums, so ascertained to be chargeable and due from them severally, within sixty days from this date. And it is further ordered, adjudged, and decreed that the said trustees shall further account according to the principles of the decree in this cause of July 3d, 1872, from time to time as and whenever they may realize further funds from the unproductive assets, debts, and claims due the trust estate remaining to be by them administered.

WILLIAM F. GILES.

FEB'Y 13, 1874.—Rec'd in registry of court $18,704.98, being
278 amount deposited by Wm. Bayne, one of said trustees.

FEB'Y 20, 1874.—Rec'd in registry of court $23,538.14, being amount deposited by Barton & Brooks, assignees of A. A. Chapman.

FEB'Y 24, 1874.—Rec'd in registry of court $15,242.20, being amount deposited by Horatio R. Riddle.

From which said decrees so as aforesaid passed, the said defendants,

by their solicitors aforesaid, have prayed an appeal to the next term of the Supreme Court of the United States, to be held at the city of Washington, on the second Monday of October next, and to them it is granted.

Thereupon it is ordered by the court that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same is transmitted accordingly.

Appeal-bond.

Know all men by these presents that we, Walter B. Brooks and Randolph Barton, are held and firmly bound unto the United States of America in the full and just sum of ten thousand dollars, lawful money of the United States, to the payment whereof we bind ourselves, jointly and severally, firmly by these presents, sealed with our seals and dated this twentieth day of February, in the year eighteen hundred and seventy-four.

Whereas the said United States of America had a decree rendered in its favor in the circuit court of the United States for the fourth
279 circuit in and for the Maryland district against a certain Allen A. Chapman, trustee, with others, of a certain L. P. Bayne & Co., on the twenty-second day of December, 1873, in a certain cause in said circuit court, wherein said United States were complainants and said Allen A. Chapman and others were defendants, by which said Allen A. Chapman was required to pay into said court the sum of twenty-eight thousand nine hundred and four dollars and four cents; and whereas from said decree the said Walter B. Brooks and Randolph Barton, who are assignees in bankruptcy of said Allen A. Chapman, and of Kirkland, Chase & Co., are about to take an appeal in said case from the decision of said circuit court to the Supreme Court of the United States; and whereas of said sum of money so decreed to be paid into court the sum of twenty-three thousand five hundred and thirty-eight dollars and fourteen cents hath been paid; now, the consideration of this obligation is such that if the said Walter B. Brooks and Randolph Barton shall prosecute said appeal with effect, and shall answer all costs if they fail to make the same good, or shall pay the balance of said money into court in accordance with said decree, then the above obligation to be void; else to be and remain in full force and virtue.

WALTER B. BROOKS. [SEAL.]
RANDOLPH BARTON. [SEAL.]

Witness:
JAS. W. CHEW.

280 (Which said bond is thus endorsed, to wit:) Bond. Approved 20 Feb'y, 1874. William F. Giles.

Appeal-bond.

Know all men by these presents that we, Allen N. Bastable and Randolph Barton, of Baltimore City, and Walter B. Brooks, of Baltimore County, in the State of Maryland, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, lawful money of the United States, to the payment whereof we bind ourselves, jointly and severally, firmly by these presents, sealed with our seals and dated this 20th day of February, A. D. 1874.

Whereas the said United States of America had a decree rendered in

its favor on the 22d day of December, A. D. 1873, in the circuit court of the United States for the fourth judicial circuit in & for the district of Maryland, in a certain cause depending in said court between the said United States of America, complainants, and William Bayne, Horatio R. Riddle, Allen A. Chapman, trustees of Bayne & Co., and others, defendants, and the said defendants have prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday of October next, to reverse the said decree:

Now, the consideration of the above obligation is such that if the said appellants shall prosecute their said appeal with effect, and answer all damages and costs if they fail to make their appeal good, then
281 the above obligation to be void; else to remain in full force and virtue.

ALVIN N. BASTABLE. [SEAL.)
WALTER B. BROOKS. [SEAL.]
RANDOLPH BARTON. [SEAL.]

Signed, sealed, and delivered in presence of—
JAS. W. CHEW.

(Which said bond is thus endorsed, to wit:) Bond approved Feb'y 20th, 1874. William F. Giles.

In testimony that the aforegoing is a true copy of the record and proceedings in the cause aforesaid in the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit courtt his tenth day of July, 1874.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 170. William Bayne, Horatio R. Riddle, & Allen A. Chapman, trustees of Bayne & Co., et al., appellants, vs. The United States. Maryland C. C. U. S. Filed 16th October, 1874.

REC. 170—9

Supreme Court of the U. S.

No. 170.

WILLIAM BAYNE, HORATIO R. RIDDLE, AND ALLEN A. CHAPMAN TRUSTEES OF BAYNE & CO. ET AL, APPELLANTS.

vs.

THE UNITED STATES.

Appeal from the Circuit Court of the United States for the District of Maryland.

STATEMENT AND BRIEF OF APPELLANTS.

S. T. WALLIS,
THOS. W. HALL,
For the Appellants.

Murphy & Co., Printers & Stationers, Balt.

Supreme Court of the U. S.

No. 170.

WILLIAM BAYNE, HORATIO R. RIDDLE, AND ALLEN A. CHAPMAN, TRUSTEES OF BAYNE & CO. ET AL, APPELLANTS.

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

STATEMENT AND BRIEF OF APPELLANTS.

Bayne & Co., bankers and brokers of Baltimore City, failed in business and made a deed of assignment of all their effects for the benefit of creditors, with certain preferences therein, May 5th, 1866. (Record, p. 4.) The trustees named in the deed were William Bayne, Oscar King and Charles W. Boteler. Afterwards, by a proper proceeding in the Superior Court of Baltimore City, the appellants Riddle and Chapman were substituted as trustees for King and Boteler. The present appeal is from a decree of the Circuit Court of the United States for the District of Maryland in equity, passed July 3d, 1872, (Record, p. 115,) adjudging and decreeing the United States to be a preferred creditor of Bayne & Co. for the sum of $100,000, and requiring said trustees to account; and from a further decree of

said Court in the same cause passed December 15th, 1873, (Record, p. 119,) ordering payment by the trustees to the United States of the sums mentioned in said decree, amounting in the aggregate to $62,986.58, being the entire amount of trust-funds in the hands of said trustees, less their commissions and expenses as allowed by the Court. No written opinion being filed in the cause by the Court below, for

ASSIGNMENT OF ERRORS,

the appellants respectfully submit: —

1st. That the said Circuit Court erred in adjudging and decreeing the United States of America to be *a creditor* of Bayne & Co. and entitled to an account in said cause.

2nd. That the said Court erred in adjudging and decreeing the United States to be a *preferred* creditor of said Bayne & Co., and in decreeing payment as aforesaid by the trustees, to the United States, of the sums mentioned in said decree.

STATEMENT OF PLEADINGS AND EVIDENCE.

To show what were the questions involved in the cause as heard and passed upon by the Court below, the following statement of the pleadings and of the evidence is necessary.

The bill filed January 3d, 1868, recites (Record p. 1) that in April, 1866, L. P. Bayne, Wm. S. Hough and John Honeywell were bankers and brokers in the city of Baltimore, constituting the firm of Bayne & Co.; that at that time the United States had a large deposit of money belonging to the Pay Department of the United States Army, in the First National Bank of Washington city, to the credit of Col. E. E. Paulding, Paymaster; that on the 21st of April, 1866, Bayne & Co. procured $290,000 of the said money so deposited, to be withdrawn and re-deposited in the Merchants' National Bank of Washington city, "by means and contrivance of certain checks drawn by the

said Paulding, without any consideration or lawful cause therefor, and at the instance of and for the benefit of Bayne & Co., upon the said First National Bank, the proceeds whereof went immediately and directly to the use of the firm of Bayne & Co.; that in the transaction the Merchants' National Bank acted as the agent and abettor of Bayne & Co., who received and used the proceeds of said checks, with full knowledge that the same belonged to the United States, and with the further knowledge that they were obtained in violation of the laws and in fraud of the United States." (Record p. 2.) The bill charges that, by reason of the premises, Bayne & Co. became debtors of the United States in the sum of $200,000, with interest, from the date of the transaction.

The bill then recites (Record p. 2) the failure and insolvency of Bayne & Co. on the 5th of May, 1866, and the execution of a deed of assignment of that date for the benefit of creditors, with certain preferences; the substitution, by certain proceedings in Court, of Allen B. Chapman and Horatio R. Riddle for two of the trustees under said deed, and their acceptance of said trust and assumption of the duties thereof in conjunction with Wm. Bayne, also a trustee.

The bill charges (Record p. 2) that the trustees are in possession of all the assets, partnership and individual, of said Bayne & Co., and claims a priority on behalf of the United States as a creditor, in the distribution of said assets, and prays a discovery of the amount of assets, &c., from the trustees. The bill further recites (Record p. 3) the insolvency of the Merchants' National Bank, and that James C. Kennedy has been appointed receiver. The prayer for relief is framed in accordance with the foregoing allegations, for a discovery and account, &c., and that the trustees may be compelled to apply the assets in their hands to the payment of the claim of the United States.

The members of the firm of Bayne & Co., the trustees, and the preferred creditors, some of whom are non-residents, are

made defendants, and a copy of the deed of assignment of Bayne & Co. is filed as an Exhibit. (Record p. 4.)

The answer, (Record p. 8) under oath, of Wm. Bayne, Allen A. Chapman and Horatio R. Riddle, trustees of Bayne & Co., filed December 1st, 1868, admits the general allegations of the bill as to the business and failure of Bayne & Co., the assignment made by them for the benefit of creditors, and the substitution of Chapman and Riddle for two of the original trustees, alleging that such substitution was made in a proceeding to which James C. Kennedy, receiver of the Merchants' National Bank, (by whom respondents charge that the present suit against them is instigated,) was a party, and upon his application and consent.

The respondents, disclaiming all personal knowledge, &c., put the complainant upon proof of all the allegations in the bill in regard to the transactions between Col. Paulding, the banks and Bayne & Co., denying, at the same time, that, by reason of any of the things alleged, the United States are or became creditors of Bayne & Co, (though they may be of the Merchants' National Bank,) or are entitled to any priority in the distribution of the assets in the hands of the trustees.

The answer suggests (Record p. 9) that the large loan made by the Merchants' National Bank, being in excess of the limit allowed by the National Banking Law, presents a question for the consideration of Court as to the effect of such violation of law upon the rights of the parties. The answer further recites prior proceedings instituted by Robert B. Bolling, and still pending in the Circuit Court of Baltimore City, to set aside the deed of trust, and suggests that said Bolling ought to be made a party to the present suit, and closes with a general denial of any rights or equities as creditors on the part of the United States, or that, until such rights and equities are proved, the trustees are under any obligation to make the discovery, &c., prayed.

The answers of Wm. Bell and wife, (Record p. 11) and of A. M. Bastable, G. M. Bastable, and J. J. Chancellor, (Record p. 14)

set forth their respective claims as preferred creditors of Bayne & Co., under the deed of trust, deny the pretensions of the United States to be considered a creditor, or to have or enjoy any priority in the distribution of the assets, and put the complainant upon full proof of its case.

Under agreement of counsel, the depositions of the following witnesses were taken, viz: On the part of the complainants, of W. S. Huntington, David Rittenhouse and C. A. Sherman, of Washington city, and of H. C. Fahnestock, L. P. Bayne and W. E. Strong, of New York city; on the part of the defendants, of H. C. Studley, of Washington, and of L. P. Bayne and Oscar King, of New York.

The following facts are testified to by these witnesses: On the 21st of April, 1866, Lieut. Col. E. E. Paulding, Paymaster in the United States Army, having on deposit to his credit as such, a large amount of money in the First National Bank of Washington city, drew two checks on said bank, payable to his own order, for $100,000 each, endorsed them, and deposited them in the Merchants' National Bank of said city. The original checks are in evidence, returned with the deposition of W. S. Huntington, cashier of the First National Bank, marked Exhibits, J. J. J., Nos. 1 and 2," (Record, p. 42,) and the handwriting, signatures and endorsements of Col. Paulding, proved by Mr. Huntington. C. A. Sherman, cashier of the Merchants' National Bank, also a witness for the complainant, testifies that Col. Paulding drew the checks in his presence, and sent them, with his bank-book, by his own clerk or messenger, to be deposited in the Merchants' Bank. (Record, p. 32.) Oscar King, a director of the Merchants' Bank, also testifies that the deposits were made. (Record, p. 69.)

Subsequently, the checks were presented for payment at the First National Bank, by Cashier Sherman, of the Merchants' Bank, and paid by Cashier Huntington. They were paid as follows, as appears by the testimony of both these witnesses,

and in accordance with directions given by Sherman, (Record, pp. 26, 28,) viz: a telegraphic order was sent by Huntington to Jay Cooke & Co. in New York, to deposit to the credit of Bayne & Co. of Baltimore, $50,000 with Scott, Capron & Co., and the same amount with Hoyt, Anthony, Douglas & Co.; a draft of the First National Bank on the Central National Bank of New York city in favor of "C. A. Sherman, cashier," was delivered to Mr. Sherman, and he also received $50,000 in currency, making in all $200,000, the amount of Col. Paulding's two checks previously deposited in the Merchants' Bank. The currency and draft Mr. Sherman testifies he took with him to the Merchants' Bank, and that later in the day, the draft was sent to Bayne & Co. (Record, p. 34.) L. P. Bayne testifies to having received the draft on the 23d of April. (Record, p. 57.) A copy of the draft and endorsements thereon is filed with Huntington's deposition, marked "Exhibit W. S. H., No. 2." (Record, p. 42.) The deposit to Bayne & Co.'s credit in New York is explained by the statement that the Merchants' Bank had promised to let Bayne & Co. have that amount of money in New York that day, and the First National Bank having greater "facilities" for making the arrangement, the telegraphic order was sent by Huntington to accommodate the Merchants' Bank. (Record, p. 62.) The telegraphic order, which is partly in cipher, is filed with the deposition of H. C. Fahnestock, of the firm of Jay, Cooke & Co., "J. B. M., A." (Record, p. 19,) and the letter of Jay, Cooke & Co., acknowledging the receipt of the despatch, and stating that the $100,000 had been deposited as directed, and "charged to the account of the First National Bank," is returned with Huntington's deposition, marked "W. S. H., No. 3." (Record, p. 42.) Fahnestock (of Jay, Cooke & Co.,) and W. E. Strong, (of Scott, Capron & Co.,) also testify that the deposits in New York to Bayne & Co.'s credit were actually made. (Record, pp. 19, 20.)

The state of Col. Paulding's account in the First National Bank is shown by a transcript from the books of the bank, proved by Huntington and Rittenhouse, (book-keeper of the bank,) filed, marked "W. S. H., No. 1," (Record, p. 41,) and a certified copy of War warrants and treasury drafts in favor of Col. Paulding, marked "R. J. B., No. 1." (Record, p. 43.) It is also in evidence, (testified to by Oscar King,) that the Merchants' National Bank, as well as the First National, was a Government depository; that Col. Paulding, as well as other Paymasters, had money on deposit there, and that Col. Paulding's account was, in fact, the largest the bank had. (Record, p. 68.)

It further appears that at the time of this transaction, Bayne & Co were largely indebted to the Merchants' National Bank; that the bank failed on the 3d or 4th of May, according to the testimony of its cashier, (Sherman,) and that Bayne & Co. failed a day or two afterwards, their assignment made in favor of creditors bearing date May 5th, 1866. (Record, p. 34, 35.)

It further appears that on April 20th, 1866, the day before the above transaction, Mr. Huntington visited the Merchants' National Bank and made an examination into its affairs. Mr. Huntington says that he did this at the request of Col. Paulding, who desired to be informed as to the condition of the bank; that finding that Bayne & Co. were largely indebted to the bank, without a knowledge of Bayne & Co's condition, he (Huntington) could arrive at no conclusion, and so informed Col. Paulding. (Record, p. 27.) Oscar King testifies that early in April he applied to Col. Paulding, as he did to many other paymasters, to increase his deposits, but that Col. Paulding refused; that application was then made to the First National Bank for assistance, and that Huntington's visit and examination were for the purpose of determining whether such assistance could be safely extended. (Record, p. 68.) Sherman and King both testify that at that time the bank was in need of currency for its own general business as well as for the purpose of assisting Bayne &

Co. (Record, pp. 32, 68.) King testifies that Huntington said that he must see Bayne, and that L. P. Bayne was telegraphed for to come to Washington expressly to meet Huntington, with the officers of the bank, that evening by appointment. It is certain that Bayne was telegraphed for, that he went to Washington, and that an interview did take place at night at Huntington's house, at which were present Huntington, Sherman, King, Bayne and C. W. Boteler, vice-president of the Merchants' Bank, all of whom testify in this cause except the last-named.

According to the testimony of all these witnesses, Bayne made a detailed statement of his affairs to Huntington. (Record, p. 32.) Bayne testifies further that he stated the amount of relief his firm required, ($150,000,) and was interrogated by Huntington as to the security he could furnish the Merchants' Bank in case a loan was made to him; that he specified what particular securities which had been pledged by his firm as collaterals, he would be able to release with the funds loaned and would deliver to the bank, and further testifies that he did release and deliver to the bank securities to the aggregate value of $80,000 to $85,000. (Record, p. 58.) Huntington testifies that not being able to satisfy himself of the truth of Bayne's representation, he declined to give Col. Paulding the next day "any advice in the premises." Sherman, (complainant's witness,) King and Bayne, all testify that Huntington expressed himself at the interview entirely satisfied, and said positively that the desired aid should be given to the Merchants' Bank. (Record, pp. 32, 58, 69.) Bayne adds that Huntington said at this interview that he had been requested by a gentleman in the highest official position to examine into the affairs of the Merchants' Bank, and to give such relief to the bank as was necessary, if justified by its condition. (Record, p. 57.)

Bayne and King testify positively that Col. Paulding's name was not mentioned at this interview, nor was anything said about a transfer of funds to be made by Col. Paulding or by any

other Government officer, nor was the particular mode in which the Merchants' Bank was to be aided, or the source from which the funds were to come, or the character of the funds, discussed or specified. (Record, pp. 59, 69.) Bayne says that he took for granted that the assistance was to be furnished by the First National Bank, it being to the interest of the National Banks to help each other in difficulties, a thing frequently done. (Record, p. 60.) King testifies that he did not know until 10 o'clock the following morning, when he learned the fact for the first time at the First National Bank from the cashier, that any transfer of funds was to be made by Col. Paulding. (Record, p. 69.) Bayne testifies that he returned to Baltimore on the morning of the 21st, by the early six o'clock train, and that he did not know, nor did any member of his firm, until some time afterwards—not until after the failure of the Merchants' National Bank, about the 5th of May, and then only learned by report—that any funds had been transferred by Col. Paulding. He denies absolutely, not only all previous knowledge of the transfer, but any connection with or agency in the matter. No other member of his firm was in Washington at that time, or was in any way connected with the transaction or concerned in procuring the loan of $150,000 from the Merchants' National Bank. (Record, pp. 58, 59.) King's testimony is equally explicit and to the same effect. (Record, pp. 69, 72). Bayne's letter of April 13th, 1866, to L. Huyck, relied on by Appellee, is fully explained by Bayne. (Record, pp. 79 to 81).

Huntington, (complainant's witness,) the chief actor and adviser in the whole transaction, testifies that nothing was said at the interview, or at any time, which showed that Bayne expected to get the help he wanted, through the transfer of funds from the First National Bank to the Merchants' National Bank. (Record, pp. 29, 30.)

Sherman details the circumstances of his visit, in company with King, the following morning, to the First National Bank,

to ascertain if the promised aid would be forthcoming, and Huntington's private conferences with Col. Paulding at the bank, concluding with his (Huntington's) telling Sherman that a transfer would be made, and directing him to go to Col. Paulding, at whose office, as already stated, the checks were drawn by Col. P. and sent to be deposited in the Merchants' Bank. (Record, pp. 32, 33.) King's testimony is in effect the same.

POINTS.

1. It is submitted that the concurrent testimony of all the witnesses, disproves the allegation of the bill, that Bayne & Co. "procured" the withdrawal of funds of the United States, deposited to Col. Paulding's credit in the First National Bank, and the re-deposit of said funds in the Merchants' National Bank, "by means and contrivance of certain checks drawn by said Paulding, at the instance and for the benefit of Bayne & Co., upon the said First National Bank;" or that Bayne & Co. received and used "the proceeds of said checks with full knowledge that the same belonged to the United States, and with the further knowledge that they were obtained in violation of law and in fraud of the said United States."

2. There is, it is submitted, a complete failure of proof on the part of complainant to sustain these material allegations of its bill, or to establish the relation of debtor and creditor between Bayne & Co. and the United States. There is no evidence of illegality or fraud in the transaction, and not a tittle of evidence to affect Bayne & Co. with any knowledge even of the transfer, until long after it was made and the funds had been applied. Col. Paulding acting under advice, apparently, upon which he had a right to rely, or of his own free will, transfers funds deposited to his credit as a disbursing officer of the Government, from one Government depositary to another, both banks being equally accredited and honored with the same

mark of confidence on the part of Government, and he, Col. Paulding, having large amounts of money deposited to his credit by Government in both banks.

3. It is not necessary, upon the facts as proven, to impute any improper intention to anybody, or to suppose that in permitting or recommending even the transfer from his own bank, Cashier Huntington was actuated by any other motive than a desire to help the Merchants' Bank, and an honest conviction that the transfer could be made with safety.

4. By the transaction in controversy, the Merchants' Bank became additionally indebted to the Government, and no fiduciary relation or any other than that of debtor and creditor was established between them. The Bank, upon the deposit, became entitled to deal with the moneys deposited as with any other funds belonging to it, and the fact that it loaned or transferred to Bayne & Co. a portion of such moneys, created no relation or privity whatsoever between the Government and Bayne & Co. The latter became debtors of the Bank but not of the Government.

Thompson vs. Riggs, 5 Wallace, 678.
Bank of Republic vs. Millard, 10 Wallace, 155, 158.
Bank vs. Lanier, 11 Wallace, 375.

By the National Banking Acts (1863, Sec. 57, and 1864, Sec. 45,) the Secretary of the Treasury was required to protect the public funds on deposit, by exacting satisfactory security from the Banks selected as depositaries, and all parties concerned had a right to believe that the Government was so protected, and that the use of the deposits, by those Banks, in the ordinary course of their business, was not only as unrestricted as in the case of private deposits, but was under the additional safeguards so provided and required by law. The fact that the particular funds were the funds of the Government and deposited by a Government

officer did not affect the rights of the parties, under the express ruling of this Court in Bank of Republic vs. Millard (*Ubi Supr.*)

5. The priority of the Government is in all cases *strictissimi juris*, and especially so where the claims of the third parties concerned are strong and unexceptionable, in point of Equity, as in the present case. The Court therefore will not enforce such priority by any strained construction or any extension of the principle or the legislation on which it is founded. By the provisions of the National Banking Acts no priority is reserved to the Government, except as to the deficiency for which the latter may be liable in redeeming the notes of the Banks. This exception apart, the assets are to be divided equally among the general creditors.

National Bank vs. Colby, 21 Wallace, 613.

Whatsoever protection the Government may need, where it makes a bank its depositary, is secured, as has been said in Point 4, not by giving it priority, but by requiring sufficient security to be taken by the Secretary of the Treasury. Beyond that, it stands upon the same footing with other creditors in the distribution of the assets of insolvent National Institutions. The Court therefore will not countenance an effort to give to the Government a priority over innocent third parties, by treating the debtors of an insolvent Bank as the debtors of the United States, and asserting its rights as against them, instead of the Bank which is the real debtor.

6. The right of the United States to follow up and recover any moneys belonging to it which have an earmark and can be traced, is quite different from the establishment of the relation of debtor and creditor between it and the parties through whose hands such moneys may have passed or who may have derived the benefit of the same.

The decree in this case (Rec. p. 115) is not for the whole amount claimed in the Bill ($200.000) but only for two amounts

of $50.000 each, "remitted directly from New York," from the First National Bank, to the credit of Bayne & Co. Those "remittances" were made by telegraphic orders from Huntington, the Cashier of the First National Bank, to Jay Cooke & Co. of New York, to deposit $50.000, with Hoyt, Anthony, Douglas & Co., New York, and $50,000 with Scott, Capron & Co., New York, to the credit of Bayne & Co. The credits in question were ordered, in pursuance of the directions of Sherman, the Cashier of the Merchants' National Bank, when he presented Col. Paulding's checks upon the First National Bank for payment to the Cashier of the latter, and the ordering of the credits was the mode in which the Merchants' National Bank directed that so much of the money payable to it, upon the checks of Col. Paulding, should be paid for its account. (See ante. p. 6 of this brief). Bayne & Co. of course derived the benefit of those credits by the extinguishment *pro tanto* of any existing indebtedness of theirs to Scott, Capron & Co. and Hoyt, Anthony, Douglas & Co. and probably by further credit with these houses, but the latter in fact received the money and applied it for their own benefit and otherwise accordingly. It can hardly be argued that they thereby became "indebted" to the Government, in the sense of the statutes, so as to give to it a priority over their other creditors in case of their insolvency, and yet it was to them and not to Bayne & Co. that the moneys adjudged to the United States were "remitted directly," in the language of the learned judge below. There must, therefore, be something more than the mere receipt of Government moneys unlawfully disbursed and passing "directly" to third parties, to bring the latter within the statutory provisions in favor of the United States, and the Circuit Court erred in supposing that the direct remittance, the only ground suggested, was a sufficient ground for its decree.

7. If there was fraud or illegality in the transaction upon which the priority of the Government is supposed to rest, it is impossible to escape the conclusion that the First National Bank

was a conscious and culpable party thereto, for its cashier, Huntington, was consulted as such, in regard to it, and, in his official capacity, knowingly participated in the misappropriation of the public funds, if any there was. The legal consequence of this must have been (assuming illegality or fraud) that the First National Bank was not entitled to credit in its account with the Government for the amount paid or furnished by it to the Merchants' National Bank or to Bayne & Co. by its orders. The indebtedness of the First National Bank to the Government remained precisely as if no such transaction had taken place, and the funds improperly disposed of were in law to be treated as the funds of the First National Bank itself, parted with at its own risk and to its own loss. There is therefore no ground for the contention that the United States was any the worse for the transaction in dispute, or that it became thereby a creditor of the parties to whom the First National Bank saw fit, at its own peril, knowingly to make the advances. It will not, of course, be argued, that to be responsible for any unlawful or tortious act towards the Government, is to be "indebted" in the sense of the statutes.

S. T. WALLIS,
THOS. W. HALL,
For the Appellants.

Supreme Court of the United States.

William Bayne, Horatio Riddle, et al.

vs.

The United States.

BRIEF OF COUNSEL FOR THE APPELLEE.

R. T. MERRICK,
For Appellee.

Judd & Detweiler, Printers.

Supreme Court of the United States.

WILLIAM BAYNE, HORATIO RIDDLE, *et. al.*

vs.

THE UNITED STATES.

BRIEF OF COUNSEL FOR THE APPELLEE.

The bill in this case was filed by the United States against the trustees of Bayne & Co., a firm of bankers and brokers in the city of Baltimore, to establish the relation of debtor and creditor between the complainants and said firm, the priority of complainants under the act of March 3d, 1797, sec. 3,466, of the Revised Statutes of the United States, and so follow and obtain a fund belonging to complainants, of which said Bayne & Co. had become possessed fraudulently and contrary to law.

PLEADINGS AND ISSUES.

The Bill.

The bill alleges, that on, and previous to the month of April, 1866, Lawrence P. Bayne, John Honeywell and William T. Hough, trading under the name and style of Bayne & Co., were carrying on in the city of Baltimore, the business of bankers and brokers.

That in said month of April, the United States had a deposit in the First National Bank of Washington City, in the District of Columbia, an authorized depository of pub-

lic moneys, of large sums of money, of which more than two hundred thousand dollars belonging to the pay department of its army was deposited to the credit of E. E. Paulding, colonel and paymaster of said army.

That by the contrivance of certain checks drawn by said Paulding, without any lawful cause or consideration therefor, and at the instance and for the benefit of said Bayne & Co., and in favor of the Merchants' National Bank of Washington City, upon the said First National Bank, said funds were withdrawn from said First National Bank, and went directly and immediately to the use and benefit of said Bayne & Co.

That in this fraudulent transaction The Merchants' National Bank acted, as the agent and abettor of said Bayne & Co., who received and used the proceeds of said checks, with the full knowledge that the same were the property of, and belonged to the United States, and with the further knowledge, that they were fraudulently obtained in violation of the laws of the United States.

That, on the 5th day of May, 1866, Bayne & Co. became and were insolvent, and executed a voluntary assignment of all the property of said firm and of all property belonging to the members thereof individually, to certain trustees named in said bill, for the benefit of their creditors, with certain preferences therein set forth, which assignment is made an exhibit to the bill of complaint.

That said trustees accepted the trusts, created in their favor in said deed of assignment, and entered upon the execution of the same, and took possession of the property of said insolvents, but that shortly after so entering on their duties, Oscar King and Charles Boteler, two of said trustees, abandoned their trust; and Allen A. Chapman and Horatio R. Riddle, were duly appointed trustees in their place, under proceedings had in regard thereto, according to the laws of

the State of Maryland, and being so appointed said Chapman and Riddle accepted their appointment as said trustees, and jointly with William Bayne, entered upon their duties as trustees, and are now in possession of valuable assets conveyed to them by said deed, and passing to them, by virtue of said appointment, amounting to not less than the sum of eighty thousand dollars.

That the Merchants' National Bank of Washington City has become insolvent, and that James C. Kennedy has been appointed receiver.

The prayer for relief is in accordance with the foregoing allegations for a discovery and account, &c., and that the trustees may be compelled to apply the assets in their hands to the payment of the claim of the United States.

The answers.

The answers of defendants admit the failure of Bayne & Co. on the 5th day of May, 1866. The execution of the deed of assignment. The substitution of Allen A. Chapman and Horatio R. Riddle as trustees in the place of Oscar King and Charles Boteler, by due proceedings under the laws of Maryland; the failure and insolvency of the Merchants' National Bank of Washington City; the appointment of James C. Kennedy as receiver; and requiring proof from complainants of the other material allegations in said bill set forth, claim that the United States did not by reason thereof, even if the same are true, become a creditor of Bayne & Co., and thereby become entitled to the relief prayed for.

EVIDENCE.

Drafts of the United States in favor of E. E. Paulding, paymaster, and deposit of proceeds.—p. 43 to p. 55.

Account of E. E. Paulding, lieutenant colonel and paymaster, with the First National Bank of Wash-

ington City, showing balance to his credit April 21, 1866, of $226,449.—p. 41.

Checks against same on that date $200,000.—pp. 31 and 41.

Draft of United States for $200,000 in favor of E. E. Paulding, paymaster, dated March 31st, 1866, and endorsed by him, deposited to his credit in the First National Bank, April 13, 1866.—pp. 54 and 41.

The $200,000 which it appears, from Paulding's account, were drawn from the First National Bank on the 21st of April, 1866, were drawn upon two checks of that date for $100,000 each made by himself in his own favor and by him endorsed, (pp. 39 and 42,) and which were presented to the bank for payment, on the day of their date, by C. A. Sherman, cashier of the Merchants' National Bank.

These checks were paid as follows:

$50,000, deposited by telegraph to the credit of Bayne & Co., with Hoyt, Anthony, Douglass & Co., New York.

$50,000, deposited by telegraph to the credit of Bayne & Co., with Scott, Capron & Co., New York.

$50,000, paid to C. A. Sherman in the draft of the First National Bank, on the Central National Bank, New York.

$50,000, paid to C. A. Sherman in money.

[Testimony of William S. Huntington.—p. 26. Testimony of Charles A. Sherman.—p. 33.]

The deposit of the $50,000 to the credit of Bayne & Co. with Hoyt, Anthony, Douglass & Co., of New York, and also the deposit of the further sum of $50,000 to the credit of Bayne & Co. with Scott, Capron & Co., of New York, were made in accordance with the directions of Lawrence P. Bayne given in writing to Oscar King, who went with C. A. Sherman to the bank and there gave him the written memorandum of instructions which he, King, had received from Bayne, and which Mr. Sherman thereupon handed to Huntington, the cashier of the bank, saying, "Mr. Huntington,

here is a memorandum from Bayne, showing whom he wanted the $100,000 deposited with in New York City."
(p. 33.)

Sherman in his testimony, (p. 34,) when asked if he, as cashier of the Merchants' National Bank, received the entire amount of the proceeds of said checks of $100,000 each, says, "I did not receive the whole $200,000. At the time of handing the memorandum to Mr. Huntington I stated that Mr. Bayne desired the $100,000 to be deposited with two banking firms in New York City, $50,000 to each, by telegram. He said, 'All right.'"

It is admitted, and is in proof, that the deposits were in fact made in New York, as hereinbefore stated, and that Bayne & Co. received and had the benefit of the funds.

Agreement and plan for getting the funds.

These transactions took place in pursuance of an agreement entered into between Bayne & Co., the Cashier of the Merchants' National Bank, the Cashier of the First National Bank, Paymaster Paulding, and Oscar King, acting on behalf of Bayne & Co.

This agreement is testified to by William S. Huntington, Cashier of the First National Bank, (p. 27), and Charles A. Sherman, Cashier of the Merchants' National Bank, (pp. 32 and 33), witnesses called on behalf of complainants; and by Lawrence P. Bayne (p. 57) and Oscar King, (pp. 68, 69 and 73), witnesses called on behalf of the defendants.

Charles A. Sherman states as follows, in reference thereto, (pp. 32 and 33:)

> "The Merchants' National Bank, at the date of the check, and for a long time prior thereto, was in want of currency, and it was suggested to the president and cashier of the bank, that Colonel Paulding had moneys, funds or currency, to his credit as a disbursing officer of the Government, a portion of which

might be transferred to the Merchants' National Bank, provided the consent of Colonel Paulding and the First National Bank could be had thereto. With this view, several persons met at the house, or residence, of the cashier of the First National Bank; the persons being Mr. Oscar King, Charles W. Boteler, Lawrence P. Bayne and myself. Mr. Bayne having made representations that with the aid of $100,000, he would be enabled to relieve his banking firm from certain embarrassments, and made quite a detailed statement of his affairs, or of the affairs of his bank, in order to satisfy the cashier of the First National Bank that such aid would relieve his bank. After such statement had been made, the cashier of the First National Bank, expressed himself satisfied, and that he would consent to a *transfer of currency being made by said Paulding to said Merchants' National Bank.*

"On the following morning Mr. King and myself called upon Mr. Huntington, and on our way to his office met Mr. Huntington, who said he would then see Colonel Paulding in reference to the transfer being made, and would meet us in a few minutes thereafter at his office. In a short time after reaching his office, Mr. Huntington came in and said Colonel Paulding would be there presently. Colonel Paulding came and had a conversation with Mr. Huntington, and as Paulding left, Huntington turned to me and said a transfer would be made.

Paulding immediately returned, had a moment's further conversation with Huntington, when the latter said to me go to Paulding's office and he will give you a check for $200,000. *Mr. King and myself went to Paulding's office*, when he made out a check and handed the same, with his bank book, to his clerk or messenger, to deposit the same in the Merchants' National Bank. The deposit was made, and the check taken by me to the First National Bank, with a memorandum handed me by Mr. King, showing how and to whom the $100,000 he desired to receive was to be paid. I met Mr. Huntington at the street door of his bank, showed him the check and memorandum, the latter of which he took, and I

drew the remaining $100,000 in currency and proceeded to the Merchants' National Bank. On reaching the bank Mr. King and Mr. Boteler were in conversation, when they said that Mr. Bayne must have, as requested by him, $50,000 more, to which I objected. Mr. King said, 'wait a moment and I will telegraph Mr. Bayne.' He went out, and returned in a moment, saying he 'had telegraphed Mr. Bayne, and that the latter's reply was that he must have it, and could not get along without it.' "

William S. Huntington states as follows: (pp. 26 and 27.)

"Colonel Paulding had been applied to by the Merchants' National Bank to transfer from our bank to said Merchants' National Bank. Being doubtful of the condition of said bank, he requested me to examine into its affairs. I called at said bank, and very soon ascertained that a large proportion of its assets consisted of a balance due from Bayne & Co., and that the solvency of the bank depended almost altogether upon the solvency of Bayne & Co. I, being unacquainted with the condition of Bayne & Co., was of course unable to decide as to the solvency of the bank, and thereupon discontinued my examination. Late in the evening of the same day Mr. Bayne and some of the officers of the Merchants' bank called at my house, and attempted to convince me of the solvency of his condition. On the following morning Colonel Paulding called upon me at our bank, and desired to know the result of my examination. I stated to him that the solvency of the Merchants' Bank depended, in a great measure, upon the solvency of Bayne & Co. If what Bayne had said was true, the bank would come out all right; but not being able to judge of the truth of Bayne's statements, I could not give him any advice in the premises. It was stated, I think, by Mr. Bayne, that if he could get some immediate help, he would be saved from failure."

The examination into the condition of the Merchants'

Bank was made by Huntington on the 20th of April, 1866, and the meeting referred to took place at his house on the evening of that day. (p. 29.)

On cross-examination the following interrogatory was propounded and elicited the following answer:

> Q. "Do you know of your own knowledge or from what you have heard, that the Merchants' National Bank applied to Col. Paulding to transfer funds from the First National Bank to the Merchants' National Bank?
>
> A. "I had so understood it from Col. Paulding. Mr. Sherman and Col. Paulding both had spoken to me about the matter." (p. 29.)

This arrangement, as testified to by Bayne, (p. 57,) differs from that testified to by Huntington and Sherman, only in two or three particulars. Bayne testifies as follows: (p. 67.)

> Q. "For how long a period were you to have the use of this $150,000, and when were you to pay the bank anything upon the other debt you owed it?"
>
> A. "*The* $150,000 *was to remain in my hands until the party loaning the money to the bank should demand the same*, which was certainly not to be done in 30 days."

Oscar King testifies, "that the arrangement by which the money was to go to the use of Bayne & Co. was made at the meeting."

Bayne also testifies "that Huntington wanted to know what securities he could give if the money was advanced," and that he replied, "that the use of the money would enable him to retire certain bank and railroad stock, which he would hand over as security, together with some Virginia bank notes, and that he did accordingly, deliver to the Merchants' National Bank 100 *shares of its own stock*, and 850 shares of the Alexandria, Washington and Georgetown Railroad Company's stock. (p. 58.)

On his cross-examination it appeared that he did not own

the railroad stock, but that the same was owned by Leonard Huyck, the president of the Merchants' Bank and treasurer of the Washington, Georgetown and Alexandria Railroad Company, (p. 65,) and which had been deposited with Bayne & Co. And it also appears, from a paper voluntarily incorporated into his evidence, and marked Exhibit "A," that this stock was part of the several million dollars of fraudulent stock issued by Huyck and some other officers of that company, and with which Joseph B. Stewart was in some way mixed up. (pp. 84 and 85.)

It also appears, from the certificate of the receiver of the Merchants' National Bank, that when he took possession of the assets of that bank, eighteen days after Bayne received the money on Paulding's checks, he found "*no stock whatever* of the Washington, Georgetown and Alexandria Railroad Company among these assets; and that from the bills receivable and other assets of that bank he had been unable to realize more than $15,000," (p. 98.) This certificate bears date of March 12, 1872, and is admitted under stipulation of counsel. (pp. 92 and 93.)

Bayne and King both testify that Paulding's name was not mentioned at the meeting at Huntington's house, and King says: That he did not know that Paulding intended to make a transfer until the following morning, when he went to the First National Bank in company with Sherman to see if the arrangement of the night before had been carried out.

On cross-examination Bayne says:

> "That he conversed with King about the 10th or 13th of April, 1866, with reference to '*our wants, and sought to impress upon him the importance of our raising* $100,000 *or* $150,000,' and that he requested him to aid him in raising it. He says King lived in Baltimore, but was '*doing business with the Departments at Washington.*'" (p. 61.)

He admits having written to Leonard Huyck the following letter:

"BANKING OFFICE OF BAYNE & CO.,
"BALTIMORE, April 13, 1866.

"MY DEAR SIR: I have done all that I could do to send S. currency. Honeywell was out till 4 P. M., but could not get it. I feel bad about it, for I fear it will greatly inconvenience him. I go to Washington to-night to arrange with S. about matters of business. K. says he can arrange to get $150,000 from a party in Washington to be deposited in your bank, provided you will immediately turn the same over into my hands. If this is done all that I can say is that as much of it as I can possibly save for you from use I will do. K. and B. are at work in some important matters, and I think in the operation I can manage to save for you one-half of what is gotten. This had better be saved than lost at such a time as this. K. goes down to-morrow to get as much of it as he can, and he will want to bring it over with him.

"I advise you to telegraph to Sherman to comply with Bayne's request, and send all that K. gets to B. All right." "L. P. BAYNE."

(pp. 61 and 79.)

Explanation of initials in letter: "S."—Sherman; "K." King; "B."—Brown. (p. 81.)

He says in Exhibit "A," (p. 79,) that some days prior to the date of this letter, he had communicated to several of his friends the financial difficulties of his firm.

Oscar King testifies, on cross-examination, when interrogated as to his evidence given before the court-martial, by which Colonel Paulding was tried and convicted on charges arising out of this transaction, as follows:

"Q. I read from your examination on the trial of Colonel Paulding, above referred to:" "Q. Was Mr. Huntington clear and emphatic in the statement that he would recommend the transfer? A. Yes, sir, very positive. Q. This was a transfer to the

> Merchants' National Bank by Colonel Paulding, of funds in the First National Bank to his credit? A. Yes, sir. Q. Did you so testify?"
>
> "A. I cannot recollect." (pp. 72 and 110.)

King testifies further, "that some days before the transaction of the 21st of April was made, he had some conversation with Col. Paulding as to transferring his funds;" he is then asked how much he requested Paulding to transfer; and he replies "that he cannot recollect."

The following interrogatory is then propounded to him and the following reply elicited:

> "Q. I read from your deposition on the trial referred to, 'A. I asked the Colonel for a transference, I think, at that time; I think it was in April; it was along the 19th or 20th. Q. What amount did you request him to transfer? A. $150,000 or $200,000;' State whether you so testified; whether your memory in regard to the facts was more distinct then, or is more distinct now?"
>
> "A. I suppose I so testified; cannot say whether my memory was better then than it is now, as to the facts or not. (pp. 72 and 106.)

In his examination by the counsel for the defendants he testifies:

> "That he did not procure the deposit in question of $200,000 to be made by Paulding in the Merchants' National Bank, on the 21st of April, and does not know by whom it was procured." (p. 74.)

On his cross-examination he testifies that he received a percentage on deposits secured by him, the amount of which he did not recollect until his memory was refreshed by his testimony before the court-martial.

> "Q. State whether, in the examination before the military tribunal by which Col. Paulding was tried,

you testified as follows: I read questions and answers. 'Q. then you did receive three per cent. interest on the amount of his (Col. Paulding's) deposits? A. Yes, sir. Q. You received that three per cent. in consideration of your securing the deposits to that bank? A. I had it for my services benefiting the bank. Q. You have spoken of having received three per cent. on his (Paulding's) deposits; did you not receive that three per cent. in consideration of securing *that deposit to the bank?* A. I received three per cent. on three months' of interest. Q. Did you not receive three per cent. interest upon the amount of Col. Paulding's deposits there in consideration of your services in securing those deposits? A. I did. I have stated so. I have stated I got three per cent." State now if you so testified before that military tribunal? A. That is correct.' "

Oscar King was a director in the Merchants' National Bank of Washington city in April, 1866, (pp. 68 and 70,) owning 50 shares of its stock, which he had assigned in blank and deposited with Bayne & Co., together with some other securities valued at $20,000, as a basis of credit upon which he was to draw, but cannot say how much he drew. (p. 70.)

The securities were not withdrawn after the payment of the amount advanced on them.

Bayne & Co., he says, were indebted to him, at the time of their failure, nearly $10,000, and he is a preferred creditor to that amount in their assignment. (p. 73.)

Oscar King and Lawrence P. Bayne are the sureties on Colonel Paulding's official bond. (p. 66.)

At the date of these transactions, and independent of the $150,000 obtained on the 21st of April, 1866, Bayne & Co. owed the Merchants' National Bank between $450,000 and $500,000. (p. 37—account of Bayne & Co., pp. 95 and 96.)

At the date of its failure the Merchants' National Bank

was indebted to the Government of the United States and its disbursing officer in about the sum of $700,000, $500,000 of which consisted of deposits made by Paulding.

The Merchants' National Bank.

The Merchants' National Bank was organized on the 8th of September, 1864, with $200,000 capital stock. (pp. 113 and 114.)

William Bayne, one of the assignees of Bayne & Co., became president of the bank shortly after its organization, but resigned that office in September, 1865. (p. 76.)

The transactions between Bayne & Co. and the bank commenced on the 17th of December, 1864. (p. 77.)

These transactions were remarkably heavy, nearly, if not quite, to the extent of all the funds and deposits in the bank, and an account of the relations of Bayne & Co. to the bank, as given by Bayne himself, will be found at p. 75 of the Record.

In these transactions the ordinary rules of banking do not seem to have been followed, Bayne & Co. giving to the bank no promissory note or other evidence of indebtedness for the large amounts advanced to them from time to time. These advances were over three times the amount of the capital stock of the bank.

At the time of the failure of the bank its vaults were empty, and its available assets realized only about $15,000. (See certificate of Receiver, dated March 12, 1872, p. 98.)

POINTS.

It is submitted that the testimony in the case establishes the following propositions:

1. That $100,000 of the public money of the United States, to the credit of E. E. Paulding, paymaster, in the First Na-

× § 5200 Revised Statutes.

tional Bank, passed directly from that bank to Bayne & Co. for their use and benefit.

2. That said fund never passed into the funds of the Merchants' National Bank, and that the participation of the Merchants' National Bank in the transaction was for the purpose of concealing by the formalities of the arrangement the substance of the transaction.

3. That Paulding transferred the funds at the request and solicitation of the officers of the Merchants' National Bank and Oscar King, acting as the agents of Bayne & Co., knowing and intending at the time that such transfer was to be for the benefit of said firm of Bayne & Co.

4. That there was a combination between Bayne & Co.' the Merchants' National Bank and Oscar King to obtain in some way, for the use of said firm, public money of the United States in the custody of disbursing officers, all of said parties knowing at the time that said firm was insolvent.

5. That the Merchants' National Bank was used by Bayne & Co. as an instrument for obtaining public money of the United States in the custody of disbursing officers for the use and benefit of said firm, and that Oscar King, one of the directors of said bank, was employed at a contingent compensation to secure the deposit of such money.

6. That Lawrence P. Bayne and Oscar King, by the contradictory statements and prevarications in their evidence, have shown their consciousness of the fraudulent character of the transaction in which they were engaged.

7. That Paulding was guilty of a breach of trust in making the transfer in question.

May 30, 1865, the following circular was issued by the Paymaster General: (p. 98.)

PAYMASTER GENERAL'S OFFICE,
WASHINGTON, May 30, 1865.

To Chief Paymaster:

SIR: Whenever drafts are remitted by the Treasury to yourself direct, or for your disbursing credit with any authorized depository, (sub-treasury or bank,) you will keep the same on deposit in that place till exhausted by your checks in the process of your official requirements. In other words, the practice of transferring large sums from the place where the treasurer places them to your credit to other places or depositories in the same city, or immediate neighborhood, is peremptorily forbidden. Nor will such transfer be made from one city to another, except as public necessity shall demand. It is desirable and proper that the depositories which furnish the funds shall have the benefit of the deposits during the process of disbursement."

(Signed) B. W. BRICE,
Paymaster General U. S. A.

By the act of 3d of March, 1863, Revised Statutes, Par. 9, Art. 60, sec. 1342, "Any person" in the military service of the United States, "who knowingly and wilfully misappropriates," "or wrongfully disposes of any money or other property of the United States, furnished or intended for the military service thereof," is made liable, on conviction, to "be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge."

Provisions of Law

8. When property affected with a trust, is transferred to a party having notice, the trust follows it into the hands of the transferree, and remains attached to it as long as the identity of the thing continues. The identity of a sum of money does not consist in the pieces of coin, but in the fund, and if it is affected by a trust, it may be followed as

§§ 3620 & 5453 Revised Statutes.

long as the identity of the fund can be traced, and whoever receives it with notice will be affected by the trust.

Cook *vs.* Tullis, 18 W., 332.
The United States *vs.* Waterborough, 2d Ware's Reports, 158.
1st Story's Eq. Juris, § 533.
2d " . " § 1250.
2d Perry on Trusts, §§ 828–831, 832 and 835, and authorities in notes.
Bodenham *vs.* Hoskins, 13th Eng. L. and E., 222 and 234.

9. Actual notice is not necessary in this class of cases. If the party charged acts under circumstances which were of a nature to put him upon inquiry, he acts contrary to good faith and at his peril, and whatever is sufficient to put a party upon inquiry, is sufficient notice. And notice to the agent is notice to his principal.

Duncan *vs.* Landon, 15 W., 165.
Johnson *vs.* Bloodgood, 1 Johnson's Cases, 54.
Barnes *vs.* McChristee, 3 Penn., 67.
Astor *vs.* Wells, 4th Wheaton, 466.
Vol. 2, Part 1, p. 116, Leading Cases in Eq.

10. The law implies a promise in favor of the party rightfully entitled in all cases where the money of another has been obtained under circumstances of fraud or circumvention, and where in equity and good conscience it should not be retained.

2d Chitty on Contracts, 11th ed., pp. 936 and 937.
Pennyman *et al. vs.* Patchin, 5th Ver., 346.
Litt *vs.* Martindale, 18 C. B., 314.
Rayner *vs.* Koehler, L. R., 14 Eq., 262.
Bodenham *vs.* Koskins, 13 Eng. L. and E., 222 and 234.
Holt *vs.* Ely, 1 E. and B., 795.

11. If the theory hereinbefore set forth as to the rights of complainants should be erroneous, the United States is still entitled to the relief prayed, on the ground of the contract made by Bayne, as testified to by him, (Record, p. 67,) viz: That he was to return the money on the demand of the party loaning it to the Merchants' National Bank.

12. The United States is entitled to priority of payment out of the assets of Bayne & Co. in the hands of their trustees under sections 3466 and 3467 Revised Statutes of the United States.

United States *vs.* Fisher, 2d Cranch, 358.
United States *vs.* North Carolina, 6 Peters, 29.
Beaston *vs.* Farmers' Bank, 12 Peters, 102.
Howe *vs.* Sheppard, 2d Sumner, 133.
United States *vs.* Duncan, 4th McLain, 607 and 633.
Field *vs.* United States, 9 Peters, 182.

R. T. MERRICK,
For Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

WM. BAYNE ET ALS. v. UNITED STATES. } No. 170.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

BRIEF FOR THE APPELLEES.

The appellants make two assignments of error; denying, first, that the Government was a *creditor* of Bayne & Co.; and, secondly, that it was a *preferred* creditor.

This is an unnecessary distinction, and one that cannot be sustained, in any view. It being conceded (appellants' brief, p. 1, and record, 4) that the firm was insolvent and had made an assignment of "*all* their effects," it follows that if the Government is a creditor at all, it must necessarily and by force of the statute in that behalf be a preferred creditor, and no trustee could safely treat them otherwise after the fact of indebtment is established. (United States *v.* Fisher, 2 Cranch, 385; Harrison *v.* Sterry, 5 Cranch, 289; Hunter *v.* United States, 5 Pet., 181; United States *v.* State Bk., 6 Pet., 29; Lewis *v.* United States, 92 U. S., 618.)

Colonel Paulding transferred $200,000 of public funds in his hands from the First National Bank to the Merchants' National Bank, contrary to law. This transfer was made mainly for the benefit of Bayne & Co., to whose credit in New York $150,000 were placed by dispatch of the cashier of the First National Bank.

This fund so traced directly to Bayne & Co., was that of the Government, which it has a right to follow, irrespective of the question whether or not Bayne & Co. were aware of and sharers in the illegality of the transaction, though the evidence of contrivance is sufficiently strong. The *fact* is that this firm illegally obtained a direct transfer of this amount of public money. They could have been compelled at once to restore it, and it is properly followed in this proceeding. It is enough that the *fund* can be traced. (United States *v.* Waterborough, 2 Ware, 158–9; Goepp's Ap., 15 Penn., 428; Thompson's Ap., 22 Penn., 17; De Boice *v.* Sandford, Hoff. Ch., 194; Overseers *v.* Bank of Va., 2 Grattan, 544; McLarren *v.* Brewer, 51 Maine, 402; Bank *v.* Pollock, 4 Edw. Ch., 215; Veil *v.* Mitchell, 4 Wash. C. C., 105; 1 Am. Lead. Cas., 682 *et seq.*)

EDWIN B. SMITH,
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